

HEADQUARTERS PERSONNEL MEETING AND CONFERENCE REPORT

CHP 39 (Rev. 4-05) OPI 003

TITLE OR THEME OF MEETING(S) OR CONFERENCE(S)

Federal Audit of California's Commercial Driver License Program

NAME	TITLE
Pete Camm	Sergeant
SECTION	DIVISION
Commercial Vehicle Section	Enforcement Services Division
ATTENDANCE DATE(S) AND TIME(S)	LOCATION
November 18-20, 2008	Department of Motor Vehicles - Sacramento
<input checked="" type="checkbox"/> Agenda attached	<input checked="" type="checkbox"/> Other attachments

INSTRUCTIONS: Complete in narrative using the following headings: (1) Benefit of attendance. (2) Laudatory or critical comments of department and/or personnel. (3) Items indicating Department action. (4) Summary of significant items.

(1) Benefit of attendance.

States are required to comply with federal commercial driver license (CDL) program requirements contained in Title 49, Code of Federal Regulations (49 CFR), Part 384. If a state is found in substantial noncompliance, the state is subject to losing up to five percent of its Federal-aid highway funds for the first year (49 CFR, Part 384.401) and up to ten percent for the second and subsequent years of noncompliance. In addition, a state may be decertified from issuing or renewing CDLs (49 CFR, Part 384.405) by the Federal Motor Carrier Safety Administration (FMCSA). Personnel from the North American Driver Safety Foundation (NADSF), a part of TML, Incorporated (not an acronym), are conducting the audit for FMCSA. The audit report is tentatively scheduled to be forwarded to Mr. Terry Wolf, FMCSA State Administrator, on December 24, 2008, and will be forwarded to the Department of Motor Vehicles (DMV) ten days later.

(2) Laudatory or critical comments of Department and/or personnel.

California's law enforcement agencies, including the Department, do not have an indicator on enforcement documents, such as a check box, to identify a person operating a bus, as defined in Section 233(a) of the California Vehicle Code (VC), in violation of an out-of-service (OOS) order (e.g., Section 2800(b) VC). Currently, an officer would be required to enter a notation indicating the driver was operating a bus, designed or maintained to transport 16 or more passengers, if the driver was cited for violating Section 2800 VC. Drivers violating an OOS order when operating a specified bus are subject to enhanced disqualification time periods contained in table 4 of 49 CFR, Part 383.51. A check box on a citation would be easier for court personnel when keying conviction information for abstracts forwarded to DMV.

The audit report will also recommend law enforcement utilize electronic citations as soon as possible.



(3) Items Indicating Department action.

Commercial Vehicle Section will submit a memorandum and proposed amended sample CHP 215 (Notice to Appear), through channels, to Research and Planning Section to forward to the Judicial Council for approval.

(4) Summary of significant items.

Audits of states' CDL Programs are conducted every three years. California was previously audited in 2002 and 2005 (copy of 2005 audit attached). In accordance with 49 CFR, Part 384.107, references to certain matter or materials incorporated by reference are identified by title, version, date, etc. Any change(s) must be adopted through the regulatory process. Title 49 CFR, Part 384.107(b) specifically identifies "AAMVAnet, Inc.'s 'Commercial Driver License Information System (CDLIS) State Procedures,' version 2.0, October 1998, IBR approved for § 384.231(d)." However, FMCSA used a newer version of AAMVAnet's State Procedures for the 2005 audit and version 4.0 for the 2008 audit. Noncompliance findings in the 2005 audit, which are not in version 2.0, should have been noted as "recommendations." The DMV did not object to those findings and incorporated many of them. Several CDL holders have successfully sued DMV to remove violations from their "public" driver history records (DHR) since FMCSA has not adopted newer versions of AAMVAnet's State Procedures into 49 CFR. Additionally, FMCSA should not be able to sanction California for standards which have not been adopted through the regulatory process.

Several court clerks related to the auditors that defense attorneys, for CDL holders, are plea bargaining VC violations to city or county violations in order to circumvent negligent operator points and/or mandatory disqualifications (VC Section 15300 et seq). The DMV does not have a copy of every county's or city's ordinances for translation to VC sections; a driver's DHR will contain the ordinance conviction. Motor carriers enrolled in the Employer Pull Notice Program also do not know ordinance violations noted on a driver's pull notice and may not be able to remove a driver as required. Additionally, some courts have been dismissing commercial related DUI convictions through completion of Traffic Violator Schools (Section 42005(c) VC).

PREPARED BY SIGNATURE	DATE	SECTION COMMANDER'S SIGNATURE	DATE
	12/10/08		12-9-08
DIVISION COMMANDER'S SIGNATURE	DATE	APPROPRIATE COMMISSIONER (IF NECESSARY)	DATE
J. A. Vinton	12/11/08		12/15/08



U.S. Department
of Transportation

Administrator

1200 New Jersey Ave., S.E.
Washington, D.C. 20590

**Federal Motor Carrier
Safety Administration**

AUG 29 2007

Refer to: MC-ESL

The Honorable Arnold Schwarzenegger
Governor of California
Sacramento, CA 95814

Dear Governor Schwarzenegger:

The Federal Motor Carrier Safety Administration (FMCSA) is responsible for national oversight of the commercial driver's license (CDL) requirements included in the Motor Carrier Safety Improvement Act of 1999 (MCSIA). The MCSIA legislation included 15 new provisions to increase the overall effectiveness of the CDL program and required FMCSA to promulgate a rule to incorporate MCSIA provisions into the program. The FMCSA final rule implementing the provisions of MCSIA became effective on September 30, 2002, and required States to be in compliance with those provisions by September 30, 2005.

In previous letters and communication with your State, FMCSA indicated that in order to implement all the provisions of MCSIA, States must send and electronically receive all the new data elements required by MCSIA via the Commercial Driver License Information System (CDLIS). While States were required to be compliant with MCSIA by September 30, 2005, FMCSA granted States additional time to obtain compliance. Based on the current information provided to FMCSA by the American Association of Motor Vehicle Administrators (AAMVA), your State is not in compliance as it has not yet passed the required test.

The FMCSA recognizes and appreciates the efforts of George Valverde, Director of the California Department of Motor Vehicles and Bernard Soriano, Deputy Director, to achieve compliance.

The FMCSA has determined that all States that have not passed the MCSIA structured test are in substantial noncompliance for failure to comply with the requirements of MCSIA. California is therefore at risk of losing up to 5 percent of the Federal-aid highway funds on October 1, 2008, unless it meets all of the MCSIA requirements by completing all the described above programming changes and passes the structured test.

Specifically, the State is not in compliance with section 384.301(b) of the Federal Motor Carrier Safety Regulations which established the date by which States had to be able to implement all of the MCSIA provisions that affect drivers, motor carriers, and States. Implementation includes all the necessary changes to CDLIS and successful completion of the structured test conducted by AAMVA.

Title 49 U.S. Code section 31314 and section 384.401 of the Federal Motor Carrier Safety Regulations [49 CFR 384.401] specify the sanctions for noncompliance. Any State that does not comply substantially with the requirements for State participation in the CDL program [49 U.S.C. 31311(a), 49 CFR Part 384, Subpart B] is subject to the withholding, on the first day of the fiscal year following the first year of noncompliance, of up to five (5) percent of the Federal-aid highway funds that would otherwise be apportioned to that State under 23 U.S.C. 104(b)(1), (3) and (4). Following the second and subsequent year(s) of noncompliance, a State would be subject to the withholding of up to 10 percent of these funds [49 U.S.C. 31314].

The FMCSA would like to see your State take the necessary steps to avoid sanctions and to join other States in creating a system to keep unsafe drivers of commercial motor vehicles off our highways by implementing the provisions of MCSIA. The California FMCSA Division Administrator, Terry Wolf, and staff are available to assist you. He can be contacted at (916) 930-2766.

Sincerely yours,



John H. Hill

cc:

Will Kempton, Director, Caltrans
George Valverde, Director, California Department of Motor Vehicles
Bernard Soriano, Deputy Director, California Department of Motor Vehicles
California Congressional Delegation
Gene Fong, Division Administrator, Federal Highway Administration
J. Richard Capka, Federal Highway Administrator
Mike Lamm, Acting Office Director, FMCSA Office of Safety Programs
Terry Wolf, FMCSA Division Administrator, California
William Paden, Field Administrator, FMCSA Western Service Center



US Department
Of Transportation

Administrator

400 Seventh St., SW
Washington, DC 20590

**Federal Motor Carrier
Safety Administration**

MAR 13 2006

Refer to: MC-ESL

The Honorable Arnold Schwarzenegger
Governor of California
Sacramento, CA 95814

Dear Governor Schwarzenegger:

The Federal Motor Carrier Safety Administration (FMCSA) is responsible for national oversight of the commercial driver's license (CDL) requirements included in the Motor Carrier Safety Improvement Act of 1999 (MCSIA). This letter details the status of your State's compliance with the MCSIA CDL requirements. The MCSIA legislation included 15 new provisions aimed at increasing the overall effectiveness of the CDL program. The Act required FMCSA to promulgate a rule to incorporate MCSIA provisions into the CDL program. FMCSA's final rule implementing the provisions of MCSIA became effective on September 30, 2002. States found in noncompliance with those provisions after September 30, 2005 may face significant penalties.

Under Section 384.301(b) of the Federal Motor Carrier Safety Regulations (FMCSRs), States were allowed up to three (3) years to implement all of the MCSIA provisions that affect drivers, motor carriers, and States. Although Section 4140 of the "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" (SAFETEA-LU), signed by President Bush on August 10, 2005, gave States an additional year to comply with the school bus endorsement requirement, States must have passed enabling legislation and be able to implement and enforce all of the other MCSIA provisions by September 30, 2005. Implementation and enforcement of the MCSIA provisions require that all the necessary changes to the Commercial Driver's License Information System (CDLIS) be in place and that a State pass the structured test conducted by the American Association of Motor Vehicle Administrators (AAMVA) for sending and receiving information via CDLIS.

Based on information received from AAMVA, which administers CDLIS for FMCSA, your State has not passed the MCSIA structured test to be able to implement the MCSIA changes required by September 30, 2005. Therefore, FMCSA is issuing a preliminary determination that your State is in substantial noncompliance.

Noncompliance could result in the withholding of Federal-aid highway funds. Section 4124 of SAFETEA-LU amended 49 United States Code (U.S.C.) 31314(a) and (b), "Withholding amounts for State noncompliance," by requiring the Department to withhold, not the previous 5 or 10 percent of certain Federal-aid highway funds, but "up to" 5 or 10 percent of those funds. Therefore, any State found to be in substantial noncompliance with the FMCSRs will be subject to the withholding of up to five (5) percent of the Federal-aid highway funds that would otherwise be apportioned to that State under 23 U.S.C. 104(b)(1), (3), and (4) on the first day of

the fiscal year following the first full fiscal year of noncompliance. Following the second and subsequent year(s) of noncompliance, a State would be subject to the withholding of up to 10 percent of these funds. FMCSA may also take action under 49 CFR 384.405 to decertify the State's CDL program and prohibit the issuance of CDLs if a determination is made that the deficiencies affect a substantial number of either CDL applicants or drivers.

FMCSA is requiring your State to submit an Action Plan within 30 days of receipt of this letter detailing when it expects to have all the necessary changes made to CDLIS for MCSIA, including the following milestones and estimated completion dates:

- Date when the State expects to complete MCSIA programming changes to their information systems
- Date when the State expects to start casual testing with CDLIS
- Date when the State expects to start structured testing with CDLIS
- Date when the State expects to put their programming changes into production

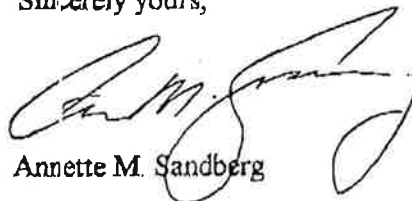
If a final determination of noncompliance is made, your State will face the loss of up to 5 percent of Federal-aid highway funds on October 1, 2007, unless the structured test is passed prior to that date.

FMCSA would like to see your State take the necessary steps to 1) avoid sanctions and 2) join other States in creating a system to keep unsafe drivers of commercial motor vehicles off our highways by implementing the provisions of MCSIA.

Please submit the Action Plan to: Dominick Spataro, Chief, Commercial Driver's License Division, FMCSA, 400 Seventh Street, S.W., Suite 8310, Washington, DC 20590.

The California FMCSA Division Administrator Terry Wolf and his staff are available to assist you. He can be contacted at (916) 930-2766.

Sincerely yours,



Annette M. Sandberg

cc:

Ken Miyao, Deputy Director, California Department of Motor Vehicles
Will Kempton, Director, California Department of Transportation
J. Richard Capka, Acting Federal Highway Administrator
Dominick Spataro, Division Chief, FMCSA CDL Division
Terry Wolf, FMCSA Division Administrator, California
David B. Martin, FMCSA Western Service Center



U.S. Department
of Transportation

**Federal Motor Carrier
Safety Administration**

Administrator

FEB 10 2005

400 Seventh St., S.W.
Washington, D.C. 20590

Refer to: MC-ESS

The Honorable Arnold Schwarzenegger
Governor of California
Sacramento, CA 95814

Dear Governor Schwarzenegger:

On November 18, 1999, Congress passed (Public Law 106-159) the Motor Carrier Safety Improvement Act (MCSIA). The legislation included 15 new provisions aimed at improving the overall effectiveness of the Commercial Driver's License (CDL) program. The Act required the Federal Motor Carrier Safety Administration (FMCSA) to promulgate a rule to incorporate the MCSIA provisions into the CDL program and impose significant penalties for noncompliance. FMCSA's final rule implementing the provisions of MCSIA became effective on September 30, 2002.

According to Section 384.301(b) of the Federal Motor Carrier Safety Regulations (FMCSRs), States were allowed up to 3 years to implement all of the MCSIA provisions that affect drivers, motor carriers, and States. Therefore, by September 30, 2005, all States must have passed all enabling legislation and be able to implement and enforce the MCSIA provisions. States not implementing the provisions of MCSIA by September 30, 2005, may be in substantial noncompliance with the FMCSRs. Section 384.401 of the FMCSRs specifies the penalty for noncompliance. Relevant portions are summarized below:

Any State found to be in substantial noncompliance is subject to the withholding of 5 percent of the Federal-aid highway funds that would otherwise be apportioned to that State under 23 U.S.C. § 104(b)(1), (b)(3) and (b)(4) on the first day of the fiscal year following such State's first year of noncompliance. Following the second and subsequent year(s) of noncompliance, a State is subject to the withholding of 10 percent of these funds. FMCSA may also take action under 49 CFR § 384.405 to decertify the State's CDL program and prohibit the issuance of CDLs if a determination is made that the deficiencies affect a substantial number of either CDL applicants or drivers. This action is not linked to the withholding of funds and may be imposed at any time after the initial determination of noncompliance.

I am pleased to report that, based on recent information provided to us by our Division Office, your State has either already passed all necessary legislation or has adopted by reference the regulations to implement and enforce all the MCSIA provisions.

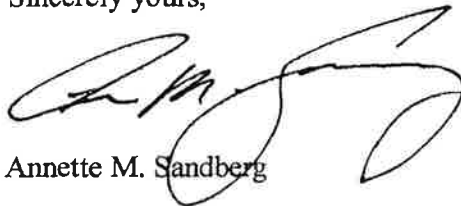
However, there is still some work to be done. All the technical changes to the Commercial Driver License Information System (CDLIS), necessary for MCSIA implementation, have not been made.

Please view this letter as a notice of accomplishment and a reminder that in order to implement and enforce all the provisions of MCSIA by September 30, 2005, all the necessary modifications to CDLIS need to be made.

If your State is found to be in substantial noncompliance with the FMCSRs, your State will be subject to the withholding of 5 percent of the Federal-aid highway funds that would otherwise be apportioned to your State under 23 U.S.C. § 104(b)(1), (b)(3) and (b)(4) on the first day of the fiscal year following the first year of noncompliance. Following the second and subsequent year(s) of noncompliance, your State would be subject to the withholding of 10 percent of these funds. FMCSA may also take action under 49 C.F.R. § 384.405 to decertify the State's CDL program and prohibit the issuance of CDLs if a determination is made that the deficiencies affect a substantial number of either CDL applicants or drivers. This action is not linked to the withholding of funds and may be imposed at any time after the initial determination of noncompliance.

My staff is prepared to assist your officials in clarifying issues related to CDLIS program changes. The California Division Administrator Terry Wolf and his staff are available to assist you. They may be reached at (916) 930-2760. In addition, CDL Grant money is available to States for necessary CDLIS programming changes.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Annette M. Sandberg", with a large, stylized flourish at the end.

Annette M. Sandberg

cc:

Joan Borucki, Director, California Department of Motor Vehicles
Bonnie Bass, Division Chief, FMCSA State Programs Division
Terry Wolf, FMCSA Division Administrator, California
Mary E. Peters, FHWA Administrator
California Congressional Delegation
Will Kempton, California Department of Transportation

**2005 CDL Summary Findings, Program
Improvements and Noteworthy Practices for
the State of California**

SECTION 1 – TRANSMITTAL LETTER

PLACEHOLDER FOR TRANSMITTAL LETTER

END OF SECTION

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SECTION 2 – FINDINGS

On August 2-5, 2005, Federal Motor Carrier Safety Administration (FMCSA) officials and contractors met with officials from the California Department of Motor Vehicles (DMV) regarding implementation of the California portion of the national Commercial Driver's License (CDL) Program. During the review, contractors identified concerns in four areas:

- ✓ Current standards (statutes, regulations, interpretations supporting existing program activities), identified in the chart below as **CA/CS**;
- ✓ Requirements forthcoming as a result of legislative and regulatory changes (MCSIA, Patriot Act), identified in the chart below as **CA/UR**;
- ✓ Program improvements (policies, practices, programmatic activities that affect internal operations, the national program, or both), identified in the chart below as **CA/PI**; and
- ✓ Noteworthy practices (policies, practices, programmatic activities that affect internal operations, the national program, or both), identified in the chart below as **CA/NP**.

CALIFORNIA ISSUES WITH CURRENT STANDARDS

CA/CS-1 **49 CFR 384.203, -.215-.219, -.222, -.223** Finding #1 from 2002 remains outstanding. California's Department of Motor Vehicles (DMV) continues not to recognize all convictions reported to them via CDLIS as FMCSR-defined convictions.

California has not mapped its statutes with currently effective ACD codes to result in all FMCSR-required disqualifications. As a result, convictions received via CDLIS that should result in driver disqualification do not result in disqualification. (*Per 2002 Action Plan and 2005 Onsite Report*)

A detailed ACD code review identified the following issues with California's mapping that result in the required FMCSR disqualification not being imposed.

- A. **49 CFR 384.217** California treats a conviction occurring in California or received from another state via CDLIS or on paper for a motor vehicle used in commission of a felony involving manufacturing, distributing, or dispensing a controlled substance (A50 ACD code) as an FMCSR major offense (one year/three years if hazmat, and lifetime with a second FMCSR major offense) rather than an immediate lifetime disqualification. (*Per Onsite Report*)

California Response: This finding is resolved.

ACD code A50 is now mapped to our internal code BG; BG can be found on CDL Disqualification table 4. A disqualification found on CDL Disqualification table 4 will result in a lifetime disqualification.

<i>ACD Code</i>	<i>Out of State Code</i>	<i>Disqualification table</i>
A50	BG	table 4 (lifetime disqualification)

- B. **49 CFR 384.215-.216** California does not disqualify for all leaving-the-scene convictions (B06 for a fatal accident, B07 for an injury accident, and B08 for property damage only) received via CDLIS. California codes the convictions to an internal code (O/S 57) that does not result in disqualification. (*Per 2002 Action Plan and 2005 Onsite Report*)

California Response: This finding is resolved.

As noted below, the ACD code has been assigned to new out of state codes that are found on the CDL Disqualification table 2.

<i>ACD Code</i>	<i>Out of State Code</i>	<i>Disqualification table</i>
B06	BV	table 2
B07	BW	table 2
B08	BX	table 2

- C. **49 CFR 384.222** A conviction in California for driving while an out-of-service order is in effect (B27 ACD Code) cited under CVC Sec. 2800(b) is coded as an M01 when sent as part of a driver history record in a change-state-of-record transfer to a new licensing state. The M01 is not considered by FMCSA as a disqualifying offense and a new licensing state will not consider an M01 as a first offense if the driver incurs another conviction for driving while an out-of-service order is in effect and will not impose the one-year disqualification for a second offense. (*Per Onsite Report*)

California Response: This finding is resolved.

A review of the ACD code tables that were implemented on October 1, 2005, shows that a violation under California Vehicle Code section 2800(b) is coded to ACD code B27.

- D. **CFR 384.222** California does not impose the appropriate FMCSR disqualification action for all FMCSR disqualifying convictions, as indicated on the review of out-of-state convictions received via CDLIS during January–March and June 2005. *(Per Data Analysis)*

DATE SENT	License #	SOC	VIOL. DATE	CONV. DATE	ACD	DETAIL	CMV	HAZ
08/24/04	[REDACTED]	[REDACTED]	09/03/03	09/04/03	B27		1	2
04/26/05	[REDACTED]	[REDACTED]	2/5/2005	4/12/2005	B27		1	2
01/07/04	[REDACTED]	[REDACTED]	12/09/03	12/31/03	B27		1	2

Information provided by California suggests that California takes action on B27 CMV related convictions reported via CDLIS from other states. The 3 B27 convictions listed above are the only such convictions sent to California via CDLIS in the 19 months Jan 2004 – Jul 2005. No disqualification appears on the records. California staff indicated that the Texas entry was treated as an "idle action" resulting in no disqualification. As of 9/6/2005, California staff indicated that they are still investigating why no disqualification was imposed related to the Vermont and Idaho convictions. In the Vermont case, a second conviction was received from Vermont via CDLIS on the same date and California staff believes they may have a "timing" issue related to the how such situations are handled. The Idaho case is not understood as yet.

California Response: This finding is resolved.

ACD code B27 is now mapped to Out Of State code AE; Out Of State code AE can be found on Disqualification table 8

<i>ACD Code</i>	<i>Out of State Code</i>	<i>Disqualification table</i>
B27	AE	Table 8

Section 13366.5 of the California Vehicle Code effective September 20, 2005, requires California to initiate actions from the date of receipt of conviction from a court rather than the conviction date. California has a manual process in place to take the above disqualifications until programming is completed.

Estimated date of programming completion: January 2007

- E. **49 CFR 384.223** California has not passed the AAMVA structured test for the series of railroad-highway grade crossing offenses that were to be implemented in September 2002. As a result, California does not disqualify for all of the railroad-highway grade crossing offenses when received electronically via CDLIS or on paper. In particular, reviewers could not document that California's statute is sufficient to disqualify for ACD code M24 (for all drivers, failing to negotiate a railroad-highway grade crossing because of insufficient undercarriage clearance). (*Per Onsite Report*)

California Response: We are in compliance.

California Vehicle Code § 22526(c) makes it unlawful to enter a railway crossing without sufficient undercarriage clearance; furthermore, it is listed under California Vehicle Code section 15312 which California uses for a commercial disqualification. California Vehicle Code section 22526(c) is present under disqualification table 11.

California passed structure testing for rail-road highway grade crossing on December 21, 2006.

- California's commercial driver license programming was designed to **require** a Social Security number to be entered in the driver license system as a way to meet the Social Security number reporting requirements in Federal and California state laws. Because the Social Security number is required, California cannot transmit information unless a Social Security number is present in the field. The Social Security number reporting requirement is also an effective preventive measure to stop fraudulent applications. (With California's inability to transmit this type of record, AAMVAs policy is to stop testing until California can transmit this type of message). California has requested programming to allow a transmission of the fictitious Social Security number with a conviction of a non-commercial licensed driver in a vehicle that requires a commercial licensed driver.
- California transmits "negate" actions manually for these actions; federal regulations do not require the use of CDLIS for this type of transaction.

F. **49 CFR 384.223** California assigns the following railroad-highway grade crossing statutes that equate to the noted ACD codes that FMCSA does not define as disqualifying offenses:

- M20 ACD offense = CVC Sec. 22451= M01
- M21 ACD offense = CVC Sec. 22451(a)= M09
- M21 ACD offense = CVC Sec. 22451(b)= M09
- M22 ACD offense = CVC Sec. 22452= M09
- M22 ACD offense = CVC Sec. 22452(a)= M09
- M22 ACD offense = CVC Sec. 22452(b)= M09
- M23 ACD offense = CVC Sec. 22451= M01

As a result, railroad-highway grade crossing convictions occurring in California and sent in a driver history record in a change-state-of-record transfer to a new licensing state will not be considered as a first offense. If a driver incurs another railroad-highway grade crossing offense, the new licensing state will treat the second offense as a first offense and will impose only a 90-day disqualification rather than a one-year disqualification. (*Per Onsite Report*)

California Response: This finding is resolved.

On October 1, 2005, California implemented the following railroad-highway grade crossing violation ACD codes to comply with Federal requirements.

- CVC 22451(a)(b)(c) are assigned an ACD code of M21
- CVC 22452(a)(b) are assigned an ACD code of M22

- G. **49 CFR 384.223** California does not disqualify for an offense occurring in California or from another state for failing to negotiate a railroad-highway grade crossing because of insufficient undercarriage clearance (M24 ACD code).

Reviewers were unable to locate an appropriate California Vehicle Code provision that equates to the FMCSR disqualifying offense. (*Per Onsite Report*)

California Response: We are in compliance.

ACD code M24 is mapped to Out Of State code BF; Out Of State code BF can be found on Disqualification table 11.

<i>ACD Code</i>	<i>Out of State Code</i>	<i>Disqualification table</i>
<i>M24</i>	<i>BF</i>	<i>Table 11</i>

California Vehicle Code §22526(c) which makes it unlawful to enter a railway crossing without sufficient undercarriage clearance is the citable offense; furthermore, it is listed under California Vehicle Code §15312 which California uses for a commercial disqualification.

- H. **49 CFR 384.218-.219** California does not assign an appropriate California Vehicle Code section to an M42 ACD code (improper lane change).

CMV enforcement officers cite CVC Secs. 21658 or 21658(a) with the expectation that these provisions will result in disqualification. DMV codes the provisions to M41 or M61, respectively, which result in disqualification in California. This is a concern because FMCSA does not recognize these ACD codes as disqualifying ACD codes. If the driver leaves California, the new licensing state will not consider the M41 or M61 as a conviction to pair with another FMCSR serious offense for a 60- or 120-day disqualification. California assigns an O/S code of 91 to a conviction received on paper, which translates to an ACD code of M42 in a driver history record in a change-state-of-record transfer to another state. Reviewers noted CVC Sec. 21753 (Yielding to passing) as coded to an M42. *(Per Onsite Report)*

The Data Analysis shows data supporting that California is not using ACD code M42 (Improper or erratic (unsafe) lane change) to report lane change convictions considered FMCSR-serious violations. For the calendar years 2003 and 2004, California reported 2,016 M40 convictions and no M42 convictions via CDLIS. *(Per Data Analysis)*

ILL Group											
2004						2003					
STATE OF CONV	M40	M41	M42	TOT M4x	% OF M42 TO TOT	STATE OF CONV	M40	M41	M42	TOT M4x	% OF M42 TO TOT
CA	2,016	0	0	2,016	0.00%	CA	619	1		620	0.00%
ALL STATES TOT M4x	3,039	2,155	1,881	7,075	26.59%	ALL STATES TOT M4x	812	516	327	1,655	19.76%

California Response: California agrees with this finding.

A request for a change of programming has been submitted to change the application of ACD code M42 from CVC section 21753 to CVC section 21658 and 21658(a). We will also map ACD code M42 to disqualification table 5.

Programming changes have been requested to allow an entry of unknown as the hazmat indicator to be stored and so preserve the information as transmitted. Programming changes have also been requested to prevent the changing of the hazmat indicator and to preserve the information as transmitted.

Estimated date of programming completion: October 2007

- I. **49 CFR 384.218-.219 California** does not review an S11, S61, or S92 received via CDLIS for detail to identify a disqualifying conviction at 15mph or greater. *(Per Onsite Report and Data Analysis Report)*

The Data Analysis shows data supporting that California is not checking detail on out-of-state convictions with S92 ACD code.

DATE SENT VIA CDLIS	CALIFORNIA LICENSE NUMBER	ST of CONVIC	VIOL DATE	CONVIC DATE	ACD	DETAIL	CMV	HAZ
03/15/05	[REDACTED]	[REDACTED]	10/05/2004	10/27/2004	S92	55085	1	9
<i>Conviction posted and should "match" another S92 but required disqualification not imposed. [Hazmat=unknown sent but posted as hazmat=no.] California staff indicated that California currently does not compute detail data provided. A software update scheduled on 9/20/2005 will calculate the reported speeding detail values to identify those convictions as either serious or non-serious speeding convictions. [California staff continues to research why the reported hazmat=unknown was posted as hazmat=no.]</i>								
06/02/05	[REDACTED]	[REDACTED]	1/27/2005	4/26/2005	S92	55070	1	2
<i>This conviction should "match" with 2 serious CMV S92 speeding convictions existing on the driver's record to cause a 120-day disqualification; no disqualification posted. Missing also is a 60-day disqualification for those two S92 convictions posted with violation dates of 9/8/03 and 4/3/04. As noted above, California staff indicated that California currently does not compute detail. The 9/20/05 software update has code designed to correct this issue.</i>								

***** California Response:** California agrees with this finding.

Programming has been requested to allow the capture and application of information in the detail field when it is transmitted with a S92 ACD code transmission.

Estimated date of programming completion: October 2007

Manual procedures are in place, a file pass is conducted to capture all violations that may lead to a disqualification action and driver safety personnel review the record to determine the appropriate action to be taken.

Estimated date of programming completion: January 2007

Programming changes have been requested to prevent the changing of the hazmat indicator and to preserve the information as transmitted. This is to reference comment made within the text of the table above. Finding CA/CS-19C is the finding that directly references this subject.

Estimated date of programming completion: October 2007

- J. **49 CFR 384.218-.219** California does not disqualify for a conviction for a violation resulting in a fatal accident (U31) occurring in California. California posts a conviction received via CDLIS and assigns an internal code to a conviction received on paper, and disqualifies for those inbound convictions. Reviewers could not identify a California violation statute for a violation resulting in a fatal accident. *(Per Onsite Report)*

California Response: California believes we are in compliance.

California does disqualify for an inbound ACD code of U31

ACD Code Out of State Code Disqualification table

U31 B4 Table 5

California Penal Code section 192(c) (1) (Vehicular manslaughter) is associated with CDL Disqualification table 10.

Pursuant to E-mail dated 11/20/2006, from Terry Wolf @ DOT, explanation provided is acceptable.

- K. **49 CFR 384.218-.219** California does not analyze the detail field when used by a state-of-conviction in reporting CMV speeding convictions as indicated on the review of out-of-state convictions received via CDLIS during January-March and June 2005. The result is the downgrade of a serious speeding conviction to a non-serious conviction and the exclusion from consideration for disqualification action. *(Per Data Analysis)*

DATE SENT VIA CDLIS	CALIFORNIA LICENSE NUMBER	ST of CONVIC	VIOL DATE	CONVIC DATE	ACD	DETAIL	CMV	HAZ
03/15/05	D9987814	CA	10/05/2004	10/27/2004	S92	55085	1	9
Conviction posted and should "match" another S92 but required disqualification not imposed. [Hazmat=unknown sent but posted as hazmat=no.] California staff indicated that California currently does not compute detail data provided. A software update scheduled on 9/20/2005 will calculate the reported speeding detail values to identify those convictions as either serious or non-serious speeding convictions. [California staff continues to research why the reported hazmat=unknown was posted as hazmat=no.]								
03/16/05	D9987814	CA	10/03/2004	12/06/2004	S15	55000	1	2

DATE SENT VIA CDLIS	CALIFORNIA LICENSE NUMBER	ST of CONVIC	VIOL DATE	CONVIC DATE	ACD	DETAIL	CMV	HAZ
This conviction should "match" with 12/30/2002 serious CMV M34 (following too closely) conviction to cause disqualification. No disqualification appears on the record. California staff indicated that they deemed this an "idle action" and did not impose disqualification. The 60-day disqualification required would have expired as of 2/04/2005 for the conviction with a conviction date of 12/06/2004 was reported to California via CDLIS on 3/16/2005.								
06/02/05	[REDACTED]	[REDACTED]	1/27/2005	4/26/2005	S92	55070	1	2
This conviction should "match" with 2 serious CMV S92 speeding convictions existing on the driver's record to cause a 120-day disqualification; no disqualification posted. Missing also is a 60-day disqualification for those two S92 convictions posted with violation dates of 9/8/03 and 4/3/04. As noted above, California staff indicated that California currently does not compute detail. The 9/20/05 software update has code designed to correct this issue.								

California Response: California agrees with this finding:

Programming has been requested to allow the capture and application of information in the detail field when it is transmitted with a S92 ACD code transmission. This finding addresses the same type subject matter as finding 1 above.

Estimated date of programming completion: October 2007

Programming changes have been requested to allow an entry of unknown as the hazmat indicator to be stored and to preserve the information as transmitted. Programming changes have also been requested to prevent the changing of the hazmat indicator and to preserve the information as transmitted. This is to reference comment made within the text of the table above. Finding CA/CS-19C is the finding that directly references this subject.

Estimated date of programming completion: October 2007

CA/CS-2 49 CFR 384.215-.219, -.222-.223 Finding #2 from 2002 remains outstanding. California's continued use of "idle actions" effectively lessens the full effect of the disqualification as required by the FMCSRs.

California passed AB 3049 with language that begins the disqualification period as of the date of receipt of the conviction by DMV. The legislation has an effective date of September 20, 2005. However, California does not expect to have procedures – computer programming, alternative manual procedures – in place to implement the provisions by the effective date, resulting in the continuation of idle actions and reduced or nonexistent disqualification periods. California does not impose the appropriate FMCSR-required disqualifications for multiple-serious convictions as indicated in an analysis of an out-of-state conviction received via CDLIS during January–March and June 2005. California's use of the conviction date as the beginning date of the disqualification period mitigates or even eliminates the driver serving the full disqualification period. *(Per 2002 Action Plan, 2005 Onsite Report and Data Analysis)*

The Data Analysis shows the impact of California's "idle action" procedure.

DATE SENT VIA CDLIS	CALIFORNIA LICENSE NUMBER	ST of CONVIC	VIOL DATE	CONVIC DATE	ACD	DETAIL	CMV	HAZ
03/25/05	[REDACTED]	[REDACTED]	02/25/2004	03/09/2005	M84		1	2
<p>The M84 matched with the 1/13/2004 serious CMV speeding conviction (S15) as the basis for the disqualification.</p> <p>The conviction was reported to California on 3/25/2005, and the disqualification was imposed starting with the conviction date of 3/9/2005. By the time the driver receives notification of the disqualification, the penalty is effectively reduced to some period less than the required 60 days. California officials indicated that this is the same issue as with "idle action" and will be corrected starting on 9/20/2005.</p>								

California Response: This finding is resolved.

Section 13366.5 of the California Vehicle Code, effective September 20, 2005, requires California to initiate actions from the date of receipt and not the conviction date. California has a manual process in place to take the above disqualifications until programming is in place.

Estimated date of programming completion: January 2007

FMCSA's Response:

CS Finding #2 (49 CFR §384.231) California states it is initiating a disqualification action based on the date of receipt of conviction from the court but does the disqualification period begin immediately on that date which would

be before the driver is notified (not yet in receipt of the notice)? That would not be ok. Any letter should provide for a disqualification period to begin at a future date, such as 10 days from the date of the letter to allow the driver to get notice before the disqualification begins. Further clarification is needed

California 2nd Response:

As indicated in the initial response, CA passed AB3049 with language that requires CA to initiate actions from the date of receipt and not the conviction date. CA provided the proposed legislation wording to the regional FMCSA representative, Mike Gouweloos, who passed the proposed wording on to the HQ office of FMCSA. CA was concerned that the legislative language meets FMCSA's requirements. CA did not receive any comments from FMCSA that the language was not sufficient. The lack of feedback from FMCSA led CA to believe the language was sufficient. CA will need to propose legislation to change the statutory language as passed in AB 3049.

FMCSA's 2nd Response:

Response is acceptable if the legislation is to be proposed in the next session of the legislature.

California 3rd Response:

California will propose legislation this year.

CA/CS-3 **49 CFR 384.203, -.215-.216** Finding #3 from 2002 is resolved from a statutory standpoint by passing AB 3049 but remains outstanding from an operational standpoint. California does not expect to have procedures in place by the effective date of legislation implementing an administrative per se process for a .04 BAC finding.

California disqualifies for a .04 BAC finding upon a court conviction. However, once AB 3049 becomes effective on September 20, 2005, officials have indicated that California does not expect to have procedures – computer programming, alternative manual procedures, changes to forms such as the Age 21 and Older Officer's Statement or training of DMV staff or law enforcement – in place to implement the provision. (*Per 2002 Action Plan and 2005 Onsite Report*)

California Response: This finding is resolved.

The federal regulations cited do not require California to have an administrative per se process for a .04 BAC finding. If an administrative per se action is not taken for a .04 BAC, then the definition of a conviction (§383.5) has not been met until a conviction is received from the court. At the point of receipt of conviction from the court, California takes a disqualification action as specified in §383.51. (With the exception of an administrative per se action for a reading of .08 BAC or

greater) all other disqualifications are taken at the point of receipt of conviction from the court.

Section 13366.5 of the California Vehicle Code effective September 20, 2005, requires California to initiate actions from the date of receipt of conviction from a court rather than the conviction date. California has a manual process in place to take the above disqualifications until programming is completed.

Estimated date of programming completion: January 2007

The following additional findings related to administrative actions were identified in the 2005 CDL Compliance Review:

- A. **49 CFR 384.105 (Definition of Conviction), -.203, -.215-.216** California does not regard an administrative per se event (A90 for .10 BAC, A98 for .08 BAC) as a conviction, but as a withdrawal event only, when the offense occurs in California. If the driver leaves California and obtains a CDL in another state, the absence of a *conviction entry* related to the administrative action may cause what is in fact a subsequent alcohol or other disqualifying conviction to be treated as the first disqualifying event, not a subsequent conviction requiring a lifetime disqualification.

California Response: California partially agrees with the initial premise that California does not regard an administrative per se event as a conviction. While California does not consider an administrative per se action as a conviction, we clearly treat it in a like manner.

California has separate reinstatement requirements dependent upon the actions reported. An administrative action is just a portion of the entire driving under the influence process. If a case is dismissed in court, the reasons for the dismissal are reviewed and a second hearing on the admin per se may be conducted to uphold or set aside the action. If the accused is found not guilty the action is set aside. Unless a finding is made to set aside the action, the administrative per se action remains on the record and will be used to take a commercial disqualification as well as enhance a subsequent major violation.

A withdrawal for the administrative per se as well as a withdrawal for the major violation will be apparent on the record and follow the driver to the new state of record. When the driver is convicted in California, a conviction is transmitted along with a withdrawal for any additional action that may be based on the updated driver record. California will begin to transmit administrative per se actions as convictions and rely on the receiving State of Record to differentiate between the two actions as one violation.

California would like to express our concern that the failure of CDLIS requirements to provide an appropriate method to transmit an administrative per se action results in the possibility of a lifetime disqualification being taken based on a single event. The transmittal of the DUI conviction subsequent to an administrative action for the same incident may not be identified by the receiving state as related to the administrative action. FMCSA would have the states "alter" the record by negating the administrative per se withdrawal and then sending the conviction for the DUI. This altering method has been objected to by many states. The transmission of the DUI will also result in additional reinstatement requirements or an additional withdrawal action.

Estimated date of programming completion: October 2007.

49 CFR 384.203, -.215-.216 California does not consider an administrative per se conviction in conjunction with other singularly disqualifying offenses (hit and run, leaving the scene, and felonies) to impose a lifetime disqualification. California only considers an administrative per se event when paired with an alcohol related conviction as a lifetime disqualification.

California Response: California believes we are in compliance.

The reviewers are confusing the administrative per se process with the disqualification process. An administrative per se action is treated as a disqualifying offense in and of itself and in combination with other disqualifications. Manual procedures are in place for commercial disqualifications, a file pass is conducted to capture all violations that may lead to a disqualification action and driver safety personnel review the record to determine the appropriate action to be taken.

Estimated date of programming completion: January 2007

- B. **49 CFR 384. 203, -.215-.216** California does not impose the FMCSR disqualification of the California driving privilege for a non-CDL holder for an administrative per se action of BAC .08 or greater or for refusal while operating a CMV.

California Response: This finding is resolved.

With the implementation of AB 3049 on September 20, 2005, the California Vehicle Code §15300 that California uses to take commercial disqualifications for major violations was amended to read "*A driver of a commercial motor vehicle*". This reference does not restrict the major commercial disqualifications to commercially licensed drivers but covers any driver of a commercial vehicle.

Manual procedures are in place, a file pass is conducted to capture all violations that may lead to a disqualification action and driver safety personnel review the record to determine the appropriate action to be taken.

Estimated date of programming completion: January 2007

49 CFR 384.203, -.215-.216 California does not disqualify for an administrative per se event (ACD code A90 for a BAC of .10; A94 for a BAC of .04, or A98 for a BAC of .08) from another state, whether received electronically via CDLIS or on paper.

Admin per se events received electronically via CDLIS are coded to an internal code (O/S 79) that does not result in disqualification. Abstract Processing Unit staff receives but discards admin per se paperwork from other states. DMV officials indicated that legislation has passed to correct this, but as with the chemical test refusal, automated and manual processes are not in place to assure disqualification as of that date. (*Per Onsite Report*)

California does not impose the appropriate FMCSR disqualification action for all FMCSR disqualifying convictions, as indicated on the review of out-of-state convictions received via CDLIS during January–March and June 2005. (*Per Data Analysis*)

DATE SENT	License #	SOC	VIOL. DATE	CONV. DATE	ACD	DETAIL	CMV	HAZ
01/31/05	[REDACTED]	[REDACTED]	01/22/2005	01/22/2005	A90		1	9
<i>Conviction posted but required disqualification not imposed. Sent as hazmat=unknown but posted to CA record as hazmat=no. California staff indicated that until new legislation becomes effective 9/20/2005, California does not disqualify for out-of-state administrative action.</i>								
03/29/04	[REDACTED]	[REDACTED]	11/08/03	11/08/03	A90		1	9
<i>This fits the explanation provided by California staff that no disqualification occurs for an out-of-state administrative action, either an admin per se or a refusal.</i>								

California Response: This finding is resolved.

O/S 79 is located on Disqualification table 17

Effective September 20, 2005, Driver Safety personnel initiate a disqualification upon receipt of a DS367 that indicates a commercial driver license holder refused to submit to or failed to complete a chemical test. A file pass is conducted to indicate drivers that have committed violations that require a disqualification action to be taken. California uses a combination of major violations, including Administrative Per Se (Admin Per Se) actions to enhance the disqualification of commercial drivers. If a withdrawal is received from another state the action is honored in California.

In addition to any CDL action taken, California considers prior alcohol related sanctions and/or convictions to enhance the admin per se sanction.

The reviewers are confusing the admin per se sanctions with the disqualification sanction; however, these are independent sanctions.

Note: The administrative sanctions listed are incomplete. Upon receipt of a refusal with two prior alcohol related activity on the record, a three-year revocation is taken.

If another state sends a withdrawal and/or a conviction, California will reflect the information on its record. California will honor another State's withdrawal based on an admin per se. The Abstract Processing Unit has been instructed to forward these documents to the Driver Safety/ Mandatory Actions Unit to be updated.

Programming changes have been requested to allow an entry of unknown as the hazmat indicator to be stored and so preserve the information as transmitted. Programming changes have also been requested to prevent the changing of the hazmat indicator and to preserve the information as transmitted.

Estimated date of programming completion: October 2007

- c. **49 CFR 384.203, -.215-.216** Because the Age 21 and Older Officer's Statement (DS 367), the form that is used to process administrative actions, has no indicator for hazmat involvement, California does not impose the required three-year disqualification for a first administrative per se event where hazmat involvement is indicated.

California Response: This finding is resolved.

The Hazmat indicator was added to the DS 367 as of revision date September 2005. Driver Safety personnel do not solely rely on a box to be marked. The driver record and registration for the vehicle that was included in the DS 367 or the citation is also checked for any evidence that a commercial vehicle, or hazardous materials were involved or that a violator possessed a commercial driver license and the appropriate endorsements. The record is also checked for any violations that may enhance the disqualification action.

- d. **49 CFR 384.209** California does not notify the licensing state of the out-of-state driver's administrative per se action in California.

California Response: This finding is resolved.

California notifies the state of licensure of their driver's administrative per se action through a current manual process until programming is in place.

Estimated date of programming completion: October 2007

- E. **49 CFR 384.231** Because California does not post an administrative per se received from another state as a conviction, a California certified driver abstract provides potential employers with an incomplete picture of the potential employee's driving record.

California Response: We are in compliance.

This finding is an extension of CA/CS-3 A

An admin per se action does appear on the driver record regardless of the presence of a conviction from the court. A driver record provided to an employer would show the driver license action taken against the driving privilege and should be apparent to an employer. The presence of previous admin per se actions will result in enhanced sanctions for a subsequent major traffic violation.

CA/CS-4

49 CFR 384.203, -.215-.216 Finding #5 from 2002 is resolved from a statutory standpoint but remains outstanding from an operational standpoint. California continues not to treat a refusal to submit to a chemical test as a DUI conviction.

For in-state refusals, California only imposes a one-year suspension for a first refusal and a two-year revocation for a second refusal when occurring in California – there is no lifetime disqualification of the CDL privilege for the second offense. Convictions received from another state via CDLIS are posted but coded to an internal code (O/S 83) that does not result in disqualification. Abstract Processing Unit staff receives but discards chemical test refusal paperwork from other states. Thus, no disqualification occurs of the CDL privilege for a refusal (first and second offense) received from another state whether on paper or via CDLIS. AB 3049 adds CVC §§ 15300(a) (9) and 15302(i) making refusal to submit to an alcohol test a major disqualifying violation effective as of September 20, 2005. However, according to Information Systems staff, automated processes will not be in place as of the effective date, and Driver Safety Branch staff indicated that manual processes have not been developed to ensure disqualification. *(Per 2002 Action Plan and 2005 Onsite Report)*

The Data Analysis California does not impose the appropriate FMCSR disqualification action for all FMCSR disqualifying convictions, as indicated on the review of out-of-state convictions received via CDLIS during January–March and June 2005. *(Per Data Analysis)*

DATE SENT	License #	SOC	VIOL. DATE	CONV. DATE	ACD	DETAIL	CMV	HAZ
08/16/04	[REDACTED]	[REDACTED]	07/18/04	08/08/04	A12		1	2
This fits the explanation provided by California staff that no disqualification occurs for an out-of-state administrative action, either an admin per se or a refusal.								

California Response: We are in compliance.

ACD code A12 is coded to an internal code O/S 83 that is found on our Commercial Disqualification Table 17 (refusals)

California does impose that appropriate disqualification action. A file pass is made to indicate drivers that have committed violations that require a disqualification action be taken against their driving privilege. The driver safety personnel review the record to not only determine the appropriate sanction of the commercial driving privilege for the conviction but also to review the record in order to determine if an enhanced sanction is required.

FMCSA's Response:

CS Finding #4: (49 CFR §§384.203 and 384.231) Despite California stating that they are in compliance on this, the actual record from the Data Analysis Review

and the comments from California's staff during the review indicate otherwise—that, in fact, the State does not impose the appropriate federal disqualification when in receipt of out-of-state chemical test refusal convictions. Further evidence is necessary from the State if they are to maintain that they are in compliance on this.

California 2nd Response:

As indicated in the original audit finding, CA maps the conviction for refusal to O/S Code 83. This code is being added to the appropriate CA Disqualification table as part of the MCSIA Disqualification project. Programming will be complete in January, 2007.

As of January 10, 2007, the programming is not yet completed.

FMCSA's 2nd Response: Pursuant to e-mail dated 11/20/06 from Terry Wolf @ DOT, response is acceptable.

CA/CS-5 49 CFR 384.232 Finding #7 from 2002 remains outstanding. California continues not to query CDLIS and PDPS no earlier than 10 days before to CDL license document issuance for those CDL holders who renew by mail or Internet. *(Per 2002 Action Plan, 2005 Onsite Report, and Legal Review)*

California Response: We are in compliance.

Renewals - CA passes the database once a month to extract all drivers whose license will expire in 60 days. Outstanding sanctions will prevent the customer from renewal eligibility until such time the problem is resolved. A driver must renew in person at a field office, unless he/she is eligible for a renewal by mail (RBM). If renewed in field office, the CDLIS and PDPS check is conducted each time the application is accessed, until all renewal requirements are complete, and there is an issuance of license. If a commercial driver is eligible for RBM, then inquiries (Message Type 'IO') are sent to CDLIS and PDPS. If there is a response from CDLIS and/or PDPS, an indicator is set on the driver record to indicate an out-of-state condition that requires further review. This stops the issuance of any license, regardless of type of class, until resolution of the outstanding issue.

If, subsequent to the renewal check, the driver applies for a commercial license in another state, that state is required to check CDLIS. The response that CA is the SOR would result in a CSOR transaction. Upon a completed CSOR, CA updates a cancellation and 'transfer out' information onto the driver record. The transaction would invalidate the pending renewal process. If the customer returns an RBM, CA checks its records for outstanding sanctions and through CDLIS determines if it remains the SOR. If the driver is determined to be ineligible for a CA license, the RBM transaction is not processed.

PDPS retains inquiries for 104 days from the initial inquiry. If a new pointer is added to PDPS during the 104-day period because of a new action, the state of inquiry receives an unsolicited message (message type 'MO'). CA reviews the database to determine if it is a CA driver and, if appropriate, updates a stop onto the driver record. A letter is sent informing driver of the delayed hit and allows a 60-day period to resolve the problem. If the problem is not resolved within the 60 days, the application and/or license are cancelled.

Reviewers were unable to provide any scenario which would allow the issuance of a renewal license in error when the CDLIS/PDPS checks are performed when renewal notices are produced.

Aside from California's objections as stated above, California is developing the programming necessary to implement CDLIS/PDPS checks as required within the 10 day requirement.

Estimated date of programming completion: October 2007

CA/CS-6 **49 CFR 384.215-.216** Finding #8 from 2002 is resolved from a statutory standpoint but remains outstanding from an operational standpoint. AB 3049 adds to the list of major disqualifying violations in CVC §§ 15300 "using a motor vehicle to commit a felony, other than a felony described in Section 15304 [manufacture, distribution, or dispensing a controlled substance]." However, California does not expect to have procedures – computer programming, alternative manual procedures – in place to implement the provisions by the effective date. (*Per 2002 Action Plan and 2005 Onsite Report*)

California Response: This finding is resolved.

Manual procedures are in place; a file pass is conducted to capture all violations that may lead to a disqualification action and driver safety personnel review the driver records to determine the appropriate action to be taken. Any court abstract that comes in with a disposition code K, except those violations listed in disqualification table 4, are disqualified under disqualification table 16.

Estimated date of programming completion: January 2007

CA/CS-7 **49 CFR 384.215-.216** Finding #9 from 2002 is resolved from a statutory standpoint but remains outstanding from an operational standpoint. California continues not to disqualify a driver convicted of a felony involving a CMV in California.

AB 3049 adds to the list of major disqualifying violations in CVC §§ 15300 "using a motor vehicle to commit a felony, other than a felony described in Section 15304 [manufacture, distribution, or dispensing a controlled substance]." CVC § 15300(b) extends the disqualification period to three years if this violation is committed while transporting hazardous materials. However, California does not expect to have procedures – computer programming, alternative manual procedures– in place to implement the provisions by the effective date to disqualify for life for a second conviction of a major disqualifying violation including a felony involving a CMV (U03 ACD code) when the offense occurs in California. (*Per 2002 Action Plan and 2005 Onsite Report*)

California Response: This finding is resolved.

Manual procedures are in place; a file pass is conducted to capture all violations that may lead to a disqualification action and driver safety personnel review the driver records to determine the appropriate action to be taken. Any court abstract that comes in with a disposition code K, except those violations listed in disqualification table 4, are disqualified under disqualification table 16.

Estimated date of programming completion: January 2007

CA/CS-8 **49 CFR 384.222** Finding #11 from 2002 is resolved from a statutory standpoint but remains unresolved from an operational standpoint. California continues not to impose the appropriate FMVSR disqualification action for convictions for violating an out-of-service order.

AB 3049 amends CVC § 2800(b) to broaden the definition of out-of-service order to include any out-of-service order that "complies with Title 49 of the Code of Federal Regulations", in other words, any out-of-service order issued to a driver, CMV, or carrier. However, California does not expect to have procedures – computer programming, or alternative manual procedures – in place to implement the provisions by the effective date. (*Per 2002 Action Plan and 2005 Onsite Report*)

California Response: This finding is resolved.

Manual procedures are in place; a file pass is conducted to capture all violations that may lead to a disqualification action and driver safety personnel review the driver records to determine the appropriate action to be taken.

Estimated date of programming completion: January 2007

CA/CS-9 **This finding was moved to the Program Improvement section and is numbered CA/PI 18.** ~~California treats the following convictions received via CDLIS as disqualifying offenses. Added 2-7-06: Because the listed ACD codes below are not defined as FMCSR disqualifying offense ACD codes, other states receiving convictions with these ACD codes would not consider them for disqualification.~~

~~California can be more stringent than the FMCSR requirements. However, California needs to review its tables to confirm whether it wishes to impose disqualifications for these ACD codes that FMCSA does not recognize as disqualifying offenses. Added 2-7-06: These ACD codes would be uniquely disqualifying offenses for California only and not for any other state. (Per Onsite Report)~~

- ~~A. A24 (O/S 38);~~
- ~~B. A25 (O/S 58);~~
- ~~C. B13 (O/S AC);~~
- ~~D. B51 (CVC 12500, 12500A, 12500C, 12500D, 15250, O/S 24);~~
- ~~E. B72 (CVC 12951, 12951A, 12951B, 15250A, 15275);~~
- ~~F. B91 (CVC 15275A);~~
- ~~G. D29 (CVC 14603, OS 21);~~
- ~~H. F34 (CVC 22526(e))~~
- ~~I. M01 (CVC 2800(b), 22451);~~

- J. ~~M05 (CVC 21659),~~
- K. ~~M08 (OS 30),~~
- L. ~~M09 (CVC 22451A, 22452, 22452A, 22452B, O/S BA),~~
- M. ~~M16 (CVC 21462),~~
- N. ~~M40 (O/S 07),~~
- O. ~~M61 (CVC 21658, 21658(a), and~~
- P. ~~U01 (CVC 2800.1, 2800.2, 2800.3).~~

CA/CS-10 **49 CFR 384.105 (Definition of Conviction)** California does not take action for a fail-to-appear notice received for a California driver from another state.

California discards a fail-to-appear notice from another state. FMCSA Memorandum CDL-04-01 dated January 16, 2004 requires California action upon receipt of an FTA notice from another state in a manner consistent with the action California takes against its own licensee.

Added 12/30/05: California sends outbound out-of-state convictions via CDLIS with the failure-to-appear ACD Code D45. As of Sept. 30, 2005 California will need to also send outbound withdrawal CDLIS transactions for suspension actions over 60 days imposed for failure-to-appear/pay offenses for out-of-state CDL holder. (Per Onsite Report)

California Response: We are in compliance.

California does not discard a Failure to Appear (FTA) notice. The Abstract Processing Unit has been instructed to forward these documents to the Driver Safety/ Mandatory Actions Unit to be updated.

A conviction for a failure to appear is not the same as a withdrawal for a failure to appear. A conviction that would be transmitted through CDLIS as a conviction has been adjudicated by the court and the judgment against the person would be transmitted to the department with or without a conviction for the original offense.

A notice of a failure to appear may not be a withdrawal action but a denial of service action. The driving privilege in some circumstances is not suspended but services are denied until a court notification is received to dismiss the failure to appear. If a second notice is posted to a driver's record then a withdrawal action would take place.

AAMVA's CDLIS requirements for sending withdrawals due to a FTA insist that the state send the underlying conviction along with the withdrawal. The courts have in fact not adjudicated the underlying offense and no judgment has been found on any underlying conviction. AAMVA needs to develop a transmission method that allows the states to differentiate between an FTA notice, an FTA withdrawal, and an FTA conviction.

The failure of CDLIS requirements to provide an appropriate method to transmit a notice of FTA, will result in California (and potentially other states) being unable to take the appropriate action mandated by statute. A better solution would be to adopt regulations to require the states to suspend the commercial driver license upon receipt of an FTA notice.

In spite of our concerns, California is in the process of programming to send a conviction of a FTA upon the receipt of a FTA notice.

Estimated date of programming completion: August 2007

CA/CS-11 **49 CFR 384.209 Interpretation Question #2** California does not create a master pointer record on CDLIS for a CMV or hazmat offense involving a non-CDL

holder, whether the offense occurs in California or is received electronically via CDLIS or on paper from another state.

Added 2-7-06: 49 CFR 384.107(b) incorporates by reference the CDLIS State Procedures Manual Version 2.0 October 1998 where in Section 3.3.1 (Substitute Social Security Number) it states: "The CMVSA mandates that the driving record of every *operator* of a commercial motor vehicle (CMV) should become part of the CDLIS database. The scope of the definition includes driving records even of *non*-CDL drivers convicted of an offense while operating a CMV." The CDLIS State Procedures Manual Release 4.0 July 2005 states in Section 5.6 (Substitute and Pseudo Social Security Numbers): The CMVSA mandates that the driving record of every operator of a commercial motor vehicle (CMV) will be entered in the CDLIS database. The scope of the definition includes driving records even of non-CDL drivers convicted of an offense while operating a CMV." Additionally, the Guidance to 49 CFR 384.209 Interpretation Question 2 indicates that the licensing agency must establish a CDLIS pointer record for a person holding a non-CDL *(Per Onsite Report)*

California Response: California agrees with this finding.

California law prohibits the release of a non-commercial driver's social security number,

California has requested programming to allow a transmission of the fictitious Social Security number with a conviction of a non-commercial licensed driver in a vehicle that requires a commercial licensed driver. When programming is in place California will establish a pointer record for non-CDL licensed driver who commit an offense in a CDL vehicle.

Estimated date of programming completion: October 2007

FMCSA's Response:

California indicates that the programming change necessary will be incorporated into the MCSIA project schedule. However, California is currently saying that it will not begin structured testing for MCSIA until November 2008. If that is the date they are proposing to have this addressed, it would not be acceptable. We would much rather have this corrected within 6-9 months, preferably before CA is subject to an additional CDL Compliance Review.

California 2nd Response: Programming will be completed by March 2007.

- CA/CS-12 **49 CFR 384.211** California's practice is to invalidate license documents with a hole punch over the expiration date and return the documents to drivers. This practice does not meet the test of guaranteeing that the returned license cannot possibly be mistaken for a valid document by a casual observer, as noted in the interpretation. **Added 2-7-06: as indicated in the Guidance to 49 CFR 384.211 Interpretation Question #1.** *(Per Onsite Report)*

California Response: This finding is resolved.

Effective April 26, 2006, California no longer returns a commercial license surrendered by an applicant transferring from another state.

- CA/CS-13 **49 CFR 384.225** California does not post all traffic convictions for a CDL holder and any CMV offenses for a non-CDL holder regardless of the age of the conviction as required by the FMCSRs.
- California considers a traffic-related conviction more than a year old to be too old to post to the California driver record. California staff is instructed not to post a conviction from out-of-state on paper more than three years old. *(Per Onsite Report)*

California Response: This finding is resolved.

All convictions received are posted to the driving record, regardless of conviction date. California staff has been instructed to post all convictions and continue to do so.

The idle action should no longer be an issue since California now must use the date of notification as the beginning date of an action.

Section 13366.5 of the California Vehicle Code effective September 20, 2005, is specific to disqualifications; this section requires California to initiate actions from the date of receipt and not the conviction date.

CA/CS-14 **49 CFR 384.218-.219, -.222, -.223** California does not review convictions for multiple-offense disqualification using the violation date going forward and back 36 months for serious offenses and railroad-highway grade crossing offenses and 10 years (forward and back) for violations of out-of-service orders as required by the FMCSRs.

The automated withdrawal process reviews for FMCSR multiple-serious convictions and multiple railroad-highway grade crossing convictions 36 months back only from the violation date of the conviction posted. California reviews 36 months back only from the violation date of the conviction posted for violating an out-of-service order. California only reviews the previous 10 years for an offense of violating an out-of-service order. *(Per Onsite Report)*

California Response: We are in compliance.

California reviews the driving record as a whole when any action is updated on the record. The commercial disqualification is currently a manual process and the entire record is reviewed to determine the proper course of action when a possible disqualifying action is added to the record.

Pursuant to E-mail dated 11/20/06 from Terry Wolf @ DOT, response is acceptable.

CA/CS-15

Regulatory Reference Corrected to 49 CFR 384.225(a) and (b) as of 2-7-06.
~~49 CFR 384.209 Interpretation Question #1~~ California does not post all convictions as indicated in the review of out-of-state convictions received via CDLIS during January-March and June 2005 as indicated in the following tables.
 Note: The MCSIA ACD codes effective as of Sept. 30, 2005 have been deleted from the following table on 2-7-06. (Per Data Analysis)

DATE SENT VIA CDLIS	CALIFORNIA LICENSE NUMBER	STATE of CONVIC	VIOLATION DATE	CONVICTION DATE	ACD	DETAIL	CMV	HAZ
05/25/04	08147884		03/10/04	05/12/04	B04		1	2
03/05/04	08147884		12/27/03	01/27/04	A94		1	1
<p>B04 – California staff indicated that the required disqualification was imposed on the driver under CA Vehicle Code - CMV leaving scene of accident; driver appealed and the hearing officer set aside or vacated the disqualification. It was expunged from the driver's record. California staff further indicated that the reason behind the expunging of the Arizona conviction was not evident in the online database and required further research.</p> <p>A94 – California officials indicated that the conviction exists on the driver record but the internal O/S code to which it translates was removed. For a driver history request such as what the reviewers perform to obtain the driver history record, the lack of the O/S code means that the A94 conviction record does not get included in the driver history record. As of 9/8/05, California officials indicated that they would need to review the background of this transaction more fully to understand why the A94 equivalent O/S code was removed.</p>								
DATE SENT VIA CDLIS	CALIFORNIA LICENSE NUMBER	STATE of CONVIC	VIOLATION DATE	CONVICTION DATE	ACD	DETAIL	CMV	HAZ
01/06/05			11/25/2004	12/29/2004	A35		2	2
Conviction not on record reviewed. California staff indicated that they may have a problem with the internal O/S code assigned and will continue to research the entry.								
03/29/05			04/22/2004	05/06/2004	B55		4	2
A B50 conviction sent via CDLIS with the same dates is on record. California staff indicated that an internal editing code inappropriately considered this to be a duplicate.								
01/18/05			12/16/2004	01/13/2005	D21		4	2
Conviction not on record reviewed. California staff indicated that they needed to research this entry further, as California record indicates receipt of the conviction and posting using an internal O/S code and ACD code does not appear to have been maintained. As of 9/1/2005, reviewers had not received further information.								
03/15/05			12/31/2004	03/02/2005	B50		4	2
Conviction not on record reviewed. California staff indicated that they needed to research this entry further, as California record indicates receipt of the conviction and posting using an internal O/S code and ACD code does not appear to have been maintained. As of 9/1/2005, reviewers had not received further information.								

DATE SENT VIA CDLIS	CALIFORNIA LICENSE NUMBER	STATE of CONVIC	VIOLATION DATE	CONVICTION DATE	ACD	DETAIL	CMV	HAZ
03/31/05			01/30/2005	03/03/2005	B50		4	2
<i>Conviction not on record reviewed. California staff indicated that they needed to research this entry further, as California record indicates receipt of the conviction and posting using an Internal O/S code and ACD code does not appear to have been maintained. As of 9/1/2005, reviewers had not received further information.</i>								

California Response: We are in compliance.

California has been unable to ascertain the reason for the failure of the conviction to update to the driver record and it may simply be a case of transmission error. A test of our system indicated that the programming works; California has been unable to find the reason for this error.

ACD code A35 = California Vehicle Code §23222 open container violation= O/S
29

CA/CS-16 **49 CFR 384.205, -.220, -.232** California's procedures provide for issuing a first-time CDL document when the CDLIS and PDPS queries are performed more than 24 hours prior to the issuance. The FMCSR specifies that CDLIS and PDPS checks are to be performed no earlier than 24 hours prior to issuance for a driver who does not currently hold a valid CDL.

If CDLIS or PDPS is not available, procedurally the technician is to stop processing. No system stop occurs, and nothing prevents the field office from issuing the CDL instruction permit or interim CDL license despite CDLIS being unavailable and thus the CDLIS query is not performed. The technician or examiner may allow the applicant to proceed with testing. However, if the technician continues, the automated support system flags the transaction as pending until the nightly batch CDLIS check during the card request process. The results of the batch CDLIS check is sent to the CDL help desk for review. The permanent CDL license document production remains in pending status until the CDL help desk reviews the CDLIS results and releases the transaction for production of the permanent license. The CDL help desk either confirms the valid status of the applicant or, if the CDL help desk determines that a problem status exists, California sends the applicant a letter allowing 30 days to clear the problem status. California cancels the applicant's license if the applicant does not clear the matter within the 30 days. This process is post issuance, and the applicant has a legitimate paper document from California, either a 12-month CDL instruction permit or a 60-day interim CDL license. *(Per 2002 Action Plan and 2005 Onsite Report)*

California Response: We are in compliance.

This finding states that California has procedures in place to stop the issuance of a license if a PDPS/CDLIS check is unable to be performed. The finding also details the process if the PDPS/CDLIS checks were unable to be performed. California is being faced with a finding based on the presumption that a technician will not follow procedures. No evidence was presented by the reviewers that this has occurred.

Like any licensing document a "legitimate paper document" is only legitimate as long as California determines it to be legitimate. When a check is made by law enforcement of the drivers record the legitimacy of the licensing document will be confirmed or denied based on the driver record and not solely on the paper document.

FMCSR 384.205 states that the state shall within the period of time specified in 384.232, perform the check of the CDLIS.

This check has clearly been attempted by the state and "based on that information" a temporary license may be issued.

FMCSR 384.232 refers to the earliest check but does not limit the state from issuing if the check needs to be followed up at a slightly later time.

This check has clearly been done and under 383.73 the check is to determine whether the driver applicant already has been issued a CDL, or whether an action has been taken against the driving privilege.

FMCSR 383.77(b) (1) (2) ***Substitute for driving skills tests*** says that a state can rely on prior history. This prior history may not be current and would not be reflected on CDLIS.

The previous state of record may or may not have a pointer intact on CDLIS for this driver, yet this section clearly shows that the licensing state may waive the performance tests if the applicant can show adequate evidence and a certification is made to the state.

CA/CS-17 **49 CFR 384.205** California's procedures for transferring CDLs from another state allow for the potential of issuing a CDL to a driver who does not have a valid CDL in the state indicated on the physical CDL license.

If an applicant provides a CDL document for a CSOR and the CDLIS query returns no matching response when one was expected, procedurally, the technician or examiner is to call the CDL help desk for assistance in verifying the CDL document and possible correction of a broken pointer. If the technician or examiner does not follow procedure and continues without seeking assistance from the CDL help desk to validate the CDL license presented, California's automated support system creates an "add" transaction to CDLIS. This process allows a possible fraudulent license to be used to create a new master pointer record on CDLIS. *(Per Onsite Report)*

California Response: We are in compliance.

If the CDLIS query does not return a response, the technician must call the Commercial Driver License Unit.

The reviewers statement that *"If the technician or examiner does not follow procedure and continues without seeking assistance from the CDL help desk to validate the CDL license presented, California's automated support system creates an "add" transaction to CDLIS"* is inaccurate. The automated system cannot proceed until Commercial Driver License Unit is contacted and the problem is corrected.

Again a finding states that California has procedures in place to stop the issuance of a license if a CDLIS Pointer check is unable to find a pointer. The finding also details the process if the CDLIS Pointer check is unable to be performed. California is being faced with a finding based on the presumption that a technician will not follow procedures. No evidence was presented by the reviewers that this has occurred.

Like any licensing document a "legitimate paper document" is only legitimate as long as California determines it to be legitimate. When a check is made by law enforcement of the drivers record the legitimacy of the licensing document will be confirmed or denied based on the driver record and not solely on the paper document.

FMCSR 383.77(b) (1) (2) ***Substitute for driving skills tests*** clearly refers to a past commercial driving history that is not current. The previous state of record may or may not have a pointer intact on CDLIS for this driver, yet this section clearly shows that the licensing state may waive the performance tests if the applicant can show adequate evidence and a certification is made to the state.

- CA/CS-18 ~~Deleted 2-7-06: 49 CFR 384.204(a)~~ California restricts its CDL permit to intrastate operation, but does not indicate the restriction on the CDL permit document. *(Per Onsite Report)*
- CA/CS-19 **49 CFR 384.107 CDLIS State Procedures Manual** California does not follow the specified practices in the *CDLIS State Procedures Manual* as follows:
- A. California does not always send to a new state of record in a change-state-of-record transaction the ACD code as received in an out-of-state conviction via CDLIS for the California driver. If a CDLIS-received conviction errors out to a paper abstract for processing by the Abstract Processing Unit, the California native code posted may not always equate to the same ACD code as received. CDLIS State Procedures state, "...neither the jurisdictions nor the CDLIS Helpdesk can directly change another jurisdiction's driver record." (Section 2.2) *(Per Onsite Report and Data Analysis)*

California Response: We are in compliance.

When an out-of-state withdrawal is received in California, the program that updates the out-of-state withdrawal converts the information into an internal code.

However, when the out-of-state withdrawal is reported to another state from California, the internal code is not used to make the determination of which ACD to use. Instead, the Inquiry Response Program (HR0171) picks up the original ACD that was reported to us from the original state.

- B. California's current practice is to respond to a state-to-state status or history request for a former licensee. This practice does not conform to the practice in the *CDLIS State Procedures Manual, Sec. 3.12*, which requires the receiving state to reject the request with an error message when the driver is no longer its licensee. *(Per Onsite Report and Data Analysis)*

California Response: California agrees with this finding.

California does respond to all state to state status or history checks. Programming has been requested to reject the request and return an error message.

The requirement in this portion of the CDLIS State Procedures Manual is met regarding the annotation of the record to show that the license has been cancelled and the license shows that it was surrendered to the new state of record.

Estimated date of programming completion: October 2007

- c. California changed the CMV and hazmat indicators on out-of-state convictions received via CDLIS during January-March and June 2005 as indicated in the following table. While "blank" fields are allowed, the allowance is based on the premise that a state does not maintain the related data element(s). The *CDLIS State Procedures Manual* requires a state to maintain data as received from a former SOR or via a CDLIS OOSC transaction (October 1998 release, Sec. 2.6, page 6). (Per Data Analysis)

DATE SENT VIA CDLIS	CALIFORNIA LICENSE NUMBER	STATE of CONVIC	VIOLATION DATE	CONVICTION DATE	ACD	DETAIL	CMV	HAZ
2/23/05	[REDACTED]	[REDACTED]	12/15/2004	1/24/2005	S15	55070	1	9
Hazmat indicator sent as 9 (unknown); posted by California as not hazmat.								
2/03/05	[REDACTED]	[REDACTED]	20040624	20040722	F02		1	9
California changes a hazmat=unknown to a hazmat=no for storage and sending to other states. California staff indicated that when a hazmat value of "unknown" is received it is stored and subsequently sent as hazmat=no.								
06/09/05	[REDACTED]	[REDACTED]	3/22/2005	6/3/2005	M42		2	2
03/17/05	[REDACTED]	[REDACTED]	01/06/2005	02/08/2005	M42		2	2
California displays a blank (CMV=) for convictions sent as CMV=no or HM=no. Reviewers note 62 occurrences of blanks where the entry should read CMV=no or HM=no. Not one out-of-state conviction record observed in the almost 300 California records reviewed indicated a value of CMV=no. California staff indicated that a CDLIS received conviction with a "no" in the CMV or hazmat indicator field is returned to another state as a blank; when "unknown" is received, California sends a "no" in the CMV or hazmat field.								
1/31/05	[REDACTED]	[REDACTED]	01/22/2004	01/22/2005	A90		1	9
Sent as hazmat=unknown but posted to CA record as hazmat=no.								

California Response: California agrees with this finding.

Programming changes have been requested to allow an entry of unknown as the hazmat indicator to be stored and so preserve the information as transmitted. Programming changes have also been requested to prevent the changing of the hazmat indicator and to preserve the information as transmitted.

Estimated date of programming completion: October 2007

CA/CS-20 **Item 1 – 49 CFR § 384.204 – Mandatory Military Exemptions** California's exemption for military drivers from having to have a CDL is too narrow to meet the requirements of 49 CFR § 383.3.

CVC § 15210(b) (2) (B) is referred to as the authority to meet all requirements for exempting military drivers. CVC § 15210(b)(2)(B) exempts from being a CMV, and therefore from requiring the driver to have a CDL, "Military equipment operated by noncivilian personnel, which is owned or operated by the United States Department of Defense, including the National Guard, as provided in Parts 383 and 391 of Title 49 of the Code of Federal Regulations." However, 49 CFR § 383.3(c), requires states to exempt from obtaining CDLs all military personnel operating a CMV for military purposes. The exemption granted by CVC § 28.15.021(1) is, therefore, too narrow. 49 CFR § 383.3(c) requires that any CMV operated "for military purposes" may be driven by an exempted driver, including national guard military technicians who are civilians and Coast Guard personnel who are not part of the Department of Defense, but rather are part of the Department of Homeland Security. Furthermore, the exemption extends to any CMV, not just those owned by or leased to the United States Department of Defense. (*Per Legal Review*)

California Response: California agrees with this finding.

Although the wording of California's existing law is not identical to Federal regulations, California is not aware of any pending court cases where this is a demonstrable problem. If California's laws are not quite to the letter of federal regulations, California's administration of those laws are in the spirit of the regulations.

California introduced Senate Bill 2520, which has passed the Assembly and is being read in the Senate to amend its statute to the following language:

Military equipment operated, for military purposes, by civilian and non-civilian personnel, which is owned or operated by the United States Department of Defense or United States Department of Homeland Security, including the National Guard, as provided in Parts 383 and 391 of Title 49 of the Code of Federal Regulations.

CA/CS-21

Items 113 and 115 – 49 CFR § 384.202 – Have Third Party Agreement That Requires Annual Audit By State (113) and State Employees To Annually Take Skills Test Given By Third Party Or Else Retest Drivers Tested By Third Party (115) California's third party tester agreement does not require the state to conduct annual audits of the Third Party Tester as required by 49 CFR § 383.75(a)(2)(ii), or annually to either take a skills test given by the third party tester or else retest drivers tested by the third party tester as required by 49 CFR § 383.75(a)(2)(iv).

The CDL Indicator states that California's Third Party Tester Agreement requires at least annual audits of Third Party Testers by the state and refers to CVC § 15250(c)(2)(B) and 13 CCR § 25.11(a)(4). However, no such requirement could be found in the Agreement, nor in CVC § 15250(c) (2) (B) or 13 CCR § 25.11(a) (4). While the statute and regulations require the Third Party Tester to allow random audits, 49 CFR 383.75(a) (2) (ii) specifically requires that third party agreements include language requiring the state to conduct annual audits.). (115) The CDL Indicator states that California's Third Party Tester Agreement requires the state at least annually to either take the skills test given by the Third Party or else retest a representative sample of drivers tested by the Third party and refers to CVC § 15250(c)(2)(A) and 13 CCR § 25.16(a). However, no such requirement could be found in the Agreement, nor in CVC § 15250(c) (2) (A) or 13 CCR § 25.16(a). The statute and regulation do identify these alternatives as the methods for determining the effectiveness of the skills test program, but do not require that one of these methods be employed at least annually. 49 CFR 383.75(a) (2) (iv) specifically requires that third party agreements include language requiring the state to evaluate third party test results in one of these

California Response: California agrees with this finding.

California is in the process of adding language to the Third Party Tester Agreement to require that the state conduct annual audits. California does conduct at least an annual audit and requires a representative sample of drivers to test at a Department of Motor Vehicles commercial test facility.

Regulations will be promulgated to add this required language to the third party testing contracts by September 2007.

CA/CS-22 **Item 258 – 49 CFR § 384.209 – Notify Other States Of Conviction Of Their CDL Holders or Drivers Operating A CMV** – California (258) does not notify the licensing authority of the state that issued the license when a CDL holder from that state driving any type of vehicle is convicted in California of a violation related to motor vehicle traffic control nor (259) does California have the authority to notify other states when their non-CDL holders are convicted of a violation while driving a CMV as required by 49 CFR § 384.209. No statute, other than CVC § 15022 could be located imposing such a requirement. CVC § 15022 is that part of the Driver License Compact that requires a party state to notify a second party state of the conviction of a driver licensed by the second party state. However, relying on the DLC has several substantial legal problems. The definition of conviction used within the DLC is not as broad as the definition required by the FMCSRs, and therefore administrative adjudications, for example, are not defined as a conviction for purposes of the DLC and arguably cannot be legally transmitted under the DLC. Additionally, not all jurisdictions are members of the DLC, so any convictions sent to a state that was not a member arguably could not be used by the receiving state. *(Per Legal Review)*

California Response: We are in compliance.

Our legal office believes that we have sufficient authority to send driver violation information to a driver's state of record.

California reports convictions of other states CDL Holders to the State of Record and thus we are in compliance with federal regulations. The California Department of Motor Vehicles is not aware of any pending or past court cases that have challenged the State of California's duty to report convictions to other states. California Vehicle Code §1808(e) prohibits the disclosure of personal information about any person unless the disclosure is in compliance with the Driver's Privacy Protection Act of 1994. Under the Supreme Court of the United States opinion, (*Reno v. Condon*) the Driver's Privacy Protection Act of 1994 permits Department of Motor Vehicles' to disclose personal information from motor vehicle records for use "by any government agency" or by "any private person or entity acting on behalf of a Federal, State, or local agency in carrying out its functions."

The reviewers fail to produce any substantiating cases where the conviction in California could not be used, and if it could not be used as the basis of the argument would be based on the other states laws. The reviewer says that a state that was not a member of the Driver License Compact "arguably" could not use that information; if the contention is arguable then it is not proven and thus cannot be used as a finding against California.

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CALIFORNIA ISSUES WITH UPCOMING REQUIREMENTS

California has reviewed the auditors "issues" with requirements that were not yet in effect at the time the audit was conducted and offers the following response.

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49 CFR 384.226 California needs to review the practice described in Court Information Memo #05-03 to determine whether court approved traffic violator school applies to CDL holders and whether the posting of a court-ordered dismissal meets the MCSIA requirements to prohibit conviction masking for CDL holders. (*Per Onsite Report*)

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California Response: We are in compliance

California does not allow CDL holders to attend Traffic Violator School (TVS) for the purpose of masking a conviction. Legislation effective September 20, 2005, extended this prohibition to violations committed by a CDL holder while operating a non-commercial vehicle as well as to non-commercial drivers committing a violation in a vehicle that requires a commercial license. All publication related to Traffic Violator School include the prohibition. California courts and law enforcement have been notified of the prohibition, and regulations were promulgated that require Traffic Violator Schools to refuse enrollment of a CDL holder.

Our automated program does allow a TVS dismissal to be posted to the record; this ensures that if an error occurs, we can identify the problem and go back to the court to ensure the problem is corrected. Programming has been requested for an automated report to identify any TVS dismissal that is added to the record of a CDL holder, or if the abstract indicated the vehicle being operated was a commercial vehicle.

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CA/UR-1 **49 CFR 384.231** California does not consider for disqualification a conviction in a CMV received from another state as a result of an inbound CSOR for withdrawal. Only a conviction posted to the driver record while the CDL holder is a California licensee triggers a review of the driver record segment for possible disqualification. *(Per Onsite Report)*

California Response: We are in compliance.

When a conviction is updated to the driving record the entire record is evaluated to determine if an action against the driving record should be taken. This applies equally to convictions transmitted from other state either electronically, via hard copy, or as part of a change state of record.

CA/UR-3 California officials cautioned that the implementation date of ACD codes revised to reflect MCSIA and other statutory changes passed in 2004 and effective September 20, 2005 would not be met. *(Per Onsite Report)*

California Response: We are in compliance.

California was successful in implementing the ACD code changes required by CDLIS State procedures manual, version 4.0.1, released September 9, 2005. Programming was completed to implement the new ACD code changes October 1, 2005.

CA/UR-4

Items 81 and 93 – 49 CFR § 384.201 – Require Applicants To Name All States Where Previously Licensed and Check Each State Named California does not require CDL applicants to name all of the states where they were previously licensed during the 10 years prior to submitting the application as required by 49 CFR § 383.71(a)(8).

The CDL Indicator states that California requires a CDL applicant to name all of the states that he/she has been licensed to drive any type of motor vehicle during the previous 10 years and refers to CVC §§ 12800 and 15315(b). CVC 15315(b) merely requires an applicant for a CDL to surrender any previously issued CDL. CVC § 12800 does require applicants to identify any state where they were previously licensed, however the application makes no such inquiry. Obviously, California cannot check the driving record of the applicant in all of the states named by the applicant if the applicant is not asked to name the states. This requirement must be met by September 30, 2005. *(Per Legal Review)*

California Response: We are in compliance.

The version of the driver license application that was in use at the time of the audit (revision date 4/2005) contains a driver certification that "The names of all states or other jurisdictions where I have previously been licensed to drive any type of motor vehicle during the previous 10 years are listed in Part 5A below." Part 5A asks "Have you applied for a Driver License or Identification Card in California or another state/country using a different name or number within the past ten (10) years?" Boxes are provided for a yes or no answer. Then 5A continues "If yes, print name, DL/ID number, and state or country" followed by a line to provide this information. A copy of the application was provided the auditors. Subsequent revisions to our driver license application continue to contain this language.

CA/UR-5

Item 96 – 49 CFR § 384.206 – Request Driving Record From Applicant's Previous State California does not request complete driving records from states in which a CDL applicant was licensed within the 10 years prior to submission of the application as required by 49 CFR § 384.206.

The CDL Indicator refers to CVC §§12805 and 15024 as California's authority to request driving records for the previous 10 years from states where the applicant was previously licensed. Both CVC §§12805 and 15024 delineate who may not be licensed, but do not impose any express requirement on California to request records from the applicant's prior states of issuance. Because state agencies have only those powers either specifically granted to them by statute or necessarily associated with those powers that are specifically granted to them, California's authority to perform these requests is questionable. The note in the CDL Legal Indicator that "CA currently checks CDLIS, NDR & PDPS [sic] of all applicants and does not limit number of years" does not speak to the question of whether CA makes inquiries of each state specifically identified by the applicant as prior states of licensure. The application form does not require applicants to identify all states where they were previously licensed. An applicant who never held a CDL would not necessarily appear in PDPS unless he was currently suspended or revoked. Prior suspensions and revocations, no matter what the cause, might not be revealed by an inquiry of PDPS. Prior violations that did not result in a suspension or revocation would not create a pointer in PDPS under any circumstances. The requirement must be met by September 30, 2005. (*Per Legal Review*)

California Response: We are in compliance.

California Vehicle Code Section 15250(b) (2) references Title 49 regulations and specifies that a commercial license will not be issued until an applicant "has satisfied all other requirements of that act as well as any other requirements imposed by this code".

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CA/UR-6 **Items 281, 282, 284, 285, 286, 297, 298, 300, 301, 302, and 307 – 49 CFR §§ 203, -.215, -.216, and -.217 – Disqualifications for Major Violations** The major violations found in CVC §§ 15300 and 15302 must be amended by September 30, 2005 to include violations committed in any type of vehicle, not just CMVs as required by 49 CFR §§ 384.203, -.215, -.216, and -.217.

AB 3049 does NOT accomplish this. Each of these sections retains as introductory language "[a] *driver of a commercial motor vehicle* may not operate a commercial motor vehicle . . . if convicted of" followed by a list of violations. [Emphasis added.] As constructed, these sections only apply to persons convicted of the listed violations *while operating a CMV* rather than any motor vehicle. (Per Legal Review)

California Response: Senate Bill 2520 effective January 2007, resolved this issue.

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As constructed this section applies to any driver of a commercial vehicle. The changes made apply the violations committed in a motor vehicle to hold any driver of a commercial vehicle, licensed or not, to the disqualification action.

CA/UR-7 **Items 285 and 301 – 49 CFR §§ 384.215, -.216, and -.217 – Disqualifications for Leaving Scene Of Accident** The major violations listed in CVC §§ 15300 and 15302 regarding convictions for leaving the scene of an accident must be amended by September 30, 2005 to include violations committed in any type of vehicle, not just a CMV, as required by 49 CFR § 384.215, -.216, and -.217. Neither CVC §§ 15300(a) (5) nor 15302 (e) are amended by AB 3049. (Per Legal Review)

California Response: Senate Bill 2520 effective January 2007, resolved this issue.

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The changes made specify a motor vehicle operated by the driver.

CA/UR-8 **Item 310 – 49 CFR § 384.219 – Impose Disqualifications Consecutively** California does not expressly require that the 120-day disqualification imposed for conviction of a third violation of a serious traffic violation within three years be imposed in addition to any other previous period of disqualification as required by 49 CFR § 384.219. The CDL Indicator states that California imposes the 120-day disqualification period required for a third conviction within three years of a serious traffic violation in addition to any other previously imposed period of disqualification but provides no reference. No statute or regulation requiring that the disqualification be so imposed could be located. This requirement must be implemented by September 30, 2005. (Per Legal Review)

California Response: We are in compliance.

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California Vehicle Code Section 15308 states that a driver may not operate a commercial motor vehicle for a period of 120 days if the person is convicted of a third serious offense.

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CALIFORNIA PROGRAM IMPROVEMENTS

California wishes to thank the auditors for their advice and recommendations on how to improve our program.

- CA/PI-1 Finding #4 from 2002 is resolved from a statutory standpoint but remains outstanding from an operational standpoint. Finding #4 is resolved for the section of the finding regarding California having the appropriate legal authority to refuse to issue a CDL to persons not domiciled in California. AB 3049 changes CVC § 12505 to add subparagraph (2) requiring CDL applicants to be residents of California. Residency is defined in CVC § 12505 in the classic definition of domicile. However, operationally, California has no proof of residency requirement other than the signature attesting to the true and accurate information on the application. *(Per 2002 Action Plan and 2005 Onsite Report)*
- CA/PI-2 California has the following vulnerabilities in its CDL program that make certain practices subject to potential fraudulent activities:
- A. If CDLIS or PDPS returns a problem status, the technician, by procedure, is to decide whether or not to terminate the transaction. Nothing prevents the field office from issuing the CDL instruction permit or interim CDL license despite a "questionable" status on CDLIS. All "questionable" transactions that continue go into a pending status for verification by the CDL help desk. The CDL help desk either confirms the valid status of the applicant or California sends the applicant a letter allowing 30 days to clear the problem with the transaction remaining in a pending status. California cancels the applicant's license if not cleared within the 30 days. This process is post issuance and the applicant has a legitimate paper document from California, either a 12-month CDL instruction permit or a 60-day interim CDL license. *(Per Onsite Report)*
 - B. California's practice of issuing a paper document as an interim CDL, CDL instruction permit, or a temporary CDL may be abused, and does not adequately meet the needs of enforcement in other States. As referenced in the *CDL Effectiveness Study*, "paper, temporary CDL documents with no photo, issued by some States are worrisome to officers". *(Per Onsite Report)*
 - C. California should consider developing a list of authorized translators to preclude the potential of fraudulent activities with an applicant providing his/her translator. California should also consider the use of more serious consequences in addition to ceasing the testing for translators giving information to an applicant or inappropriately assisting an applicant. The current procedures are vulnerable to potential fraudulent abuse. *(Per Onsite Report)*

- D. California should consider treating the CDL skills testing as one coordinated program. California should employ the same monitoring and evaluation procedures for state examiners as those used to evaluate third party employer examiners. *(Per Onsite Report)*
- E. The Certificate of Driving Skill (DL 170) issued to a CDL applicant after passage of skills tests at an employer testing program has no security features, is easily replicated, and, thus, is open to potential fraudulent activities. *(Per Onsite Report)*
- F. No reconciliation occurs of passed CDL skills test evaluation forms to CDL license documents issued, or DL 170 certificates issued by employer-examiners to CDL license documents issued to assure California that CDL license documents are not inappropriately issued. *(Per Onsite Report)*
- G. No oversight of the CDL help desk occurs for management review and oversight to ensure concurrence with the resolution of transactions withheld in pending status that upon resolution result in a license document issuance. *(Per Onsite Report)*

CA/PI-3

California cannot be assured that it posts and take appropriate actions for all convictions involving a CMV or hazmat due to the following vulnerabilities:

- A. Reviewers suggest that court entries of the CMV and hazmat fields become mandatory, with either a "yes" or "no" entry for each conviction entered to ensure accurate identification of convictions with CMV or hazmat involvement. California court CMV and hazmat indicator fields are not mandatory fields for data entry, and court representatives were unsure of what default value (CMV=no, CMV=unk) is entered when the fields are skipped. *(Per Onsite Report)*
- B. Reviewers encourage California to review the standards for approving vendor products that ensure maximum reliability of conviction data transmitted, especially for CMV and hazmat convictions that have disqualification potential. Reports from the DMV court liaison indicate that California courts are transmitting CMV and, more importantly, hazmat convictions on a consistent basis. However, based on a review of records for the Data Analysis Report, reviewers do not see the same pattern of conviction reporting. While reviewers recognize that analysis for the Data Analysis Report is of a small number of records i.e., out-of-state convictions sent electronically to other states via CDLIS during the period January-March and June 2005, and that reviewers are analyzing only those convictions for California licensees and out-of-state CDL holders that result in disqualification, reviewers are concerned that some failure may exist in the reporting and translation of CMV and hazmat indicators from courts to DMV for posting. *(Per Onsite Report)*
- C. No tracking occurs of individual convictions sent back to California courts or other states for correction and return to DMV for posting. *(Per Onsite Report)*

- D. Reviewers encourage Justice and Government Liaison Branch staff to determine if reasons exist for the high error rates and identify solutions to reduce errors. The July 2005 report provided shows transactions that update and transactions that error out for either court correction or resolution by DMV's Abstract Processing Unit. The error rate in municipal courts generally appears quite high – up to 25% in some cases, which may result from the convictions for out-of-state and unlicensed drivers that error out. *(Per Onsite Report)*
- E. California DMV reported 71 disqualifications imposed during calendar year 2004 for FMCSR serious offenses. This small number (71) of disqualifications suggests the need for California to coordinate with law enforcement for citing the appropriate California statute that result in disqualification. For example, California officers cite CVC sections 21658, 21658A, and 21658B as violations for improper or unsafe lane change, which California considers disqualifying offenses in California but which do not result in disqualification in other states. *(Per Onsite Report)*
- F. Summary instructions used by the Abstract Processing Unit to enter out-of-state paper convictions do not include any instructions pertaining to coding for commercial or hazmat involvement. During the onsite observation of the Abstract Processing Unit, at least one staff person indicated that she scans paper tickets for vehicle information to identify CMV and enters the "SCOMVEH" indication for commercial involvement. When data-entering a conviction with hazmat involvement indicated, the staff person did not use the "SHAZMAT" to indicated hazmat involvement. *(Per Onsite Report)*
- G. Reviewers found only 29 convictions out of 525 California based convictions since 4/1/1992 from the records reviewed where CMV=yes, and of those, only 2 that are disqualifying offenses. The small number of California based disqualifying convictions and the small number of CMV convictions overall found in the records retrieved suggest that a review of the processes of citation issuance, data collection, and court reporting employed by California is warranted to determine if the citation forms, citation issuance process, data collection and/or reporting of the CMV indicator element is underrepresented. *(Per Data Analysis)*

Reviewers found only one conviction of 525 California based convictions since 4/1/1992 from the records reviewed where hazmat=yes. The single instance found of a California based conviction with hazmat involvement suggests that a review of the processes employed by California is warranted to determine if the citation forms, citation issuance process, data collection, and/or reporting of this data element is underrepresented. *(Per Data Analysis)*

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CONVICTIONS RETRIEVED WITH 4/1/92 AND LATER VIOLATION DATES (1,065)					
CALIFORNIA BASED CONVICTIONS FOUND ON CALIFORNIA RECORDS – (525)					
SERIOUS – (29)			NON-SERIOUS – (496)		
CMV – YES	CMV-NO	CMV-UNK	CMV-YES	CMV-NO	CMV-UNK
2	27	0	200	296	0
HAZ – YES	HAZ-NO	HAZ-UNK	HAZ – YES	HAZ-NO	HAZ-UNK
0	29	0	1	495	0
CONVICTIONS ON CALIFORNIA RECORDS FROM ALL OTHER STATES – (540)					
SERIOUS – (183)			NON SERIOUS – (357)		
CMV – YES	CMV-NO	CMV-UNK	CMV-YES	CMV-NO	CMV-UNK
137	45	1	214	17	126
HAZ – YES	HAZ-NO	HAZ-UNK	HAZ – YES	HAZ-NO	HAZ-UNK
0	180	3	6	224	157

- H. California's internal editing for convictions sent the same day may require review to determine how convictions with differing ACD codes result in the purging of one conviction presumed to be a duplicate. *(Per Data Analysis)*

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DATE SENT VIA CDLIS	CALIFORNIA LICENSE NUMBER	STATE of CONVIC	VIOLATION DATE	CONVICTION DATE	ACD	DETAIL	CMV	HAZ
03/29/05			04/22/2004	05/05/2004	B55		1	2
A B50 conviction sent via CDLIS with the same dates is on record. California staff indicated that an internal editing code inappropriately considered this to be a duplicate.								

- CA/PI-4 California does not create a master pointer record on CDLIS for a CDL instruction permit. If the CDLIS query returns an existing pointer for the applicant, California does not move the CDLIS pointer from the prior state to California when issuing a CDL instruction permit. *(Per Onsite Report)*

- CA/PI-5 California does not move a CDLIS MPR to California by using the CSOR transaction when an out-of-state CDL holder surrenders a CDL and downgrades to a California non-CDL license. *(Per Onsite Report)*
- CA/PI-6 California should consider additional training for CDL help desk staff in order to fully understand CDLIS transactions. Reviewers noted numerous dated entries on a recent 96-hour report. Help desk staff assigned to resolving entries on the report appeared to be more familiar with responses from PDPS than with CDLIS transactions. *(Per Onsite Report)*
- CA/PI-7 Reviewers suggest that as a safety consideration, California institute a requirement for an applicant to have an operator's license before obtaining the CDL instructional permit or a CDL license. California has no such requirement and, in effect, California allows a CDL instructional permit holder to drive a CMV without having proven that he/she can drive a passenger vehicle. *(Per Onsite Report)*
- CA/PI-8 **49 CFR 384.107 CDLIS State Procedures Manual** California accepts a conviction from out-of-state (OOSC) with flawed or partial data from the sending state in an OOSC process, a practice that does not conform to recommended practices in the *CDLIS State Procedures Manual, Sec. 3.12*. *(Per Onsite Report)*
- CA/PI-9 California should review its process for performing the Change State of Record transaction via CDLIS to determine the reason(s) for the error rates attendant to the CDLIS Change State of Record transaction. *(Per Data Analysis)*

CHANGE STATE OF RECORD ERRORS		
MONTH	NUMBER OF ERROR TRANSACTIONS	%
Jan-04	75	19%
Feb-04	102	24%
Mar-04	123	24%
Apr-04	157	30%
May-04	128	26%
Jun-04	139	28%
Jul-04	129	25%
Aug-04	147	26%
Sep-04	138	25%
Oct-04	116	25%
Nov-04	113	27%
Dec-04	141	28%

- CA/PI-10 **Item 45 – 49 CFR §§ 384.218 & -.219 – Definition of Serious Traffic Violation**
The CDL Indicator states that California includes within its definition of serious traffic violation the offense of driving a CMV without having the proper class of CDL or without having the proper endorsements for the passengers or cargo being transported and refers to CVC § 15210(p)(7). However, CVC § 15210(p)(7) includes within the definition of "serious traffic violation" driving a CMV "when the driver has not met the minimum testing standards for that vehicle as to the class or type of cargo the vehicle is carrying." While this language may be construed to make unlawful the behavior required by the federal definition of serious traffic violation found in 49 CFR §383.5, it is awkward, at best, and potentially imposes a difficult burden of proof in demonstrating that a defendant has "not met the minimum testing standards" as opposed to simply proving that he did not have the required class or endorsement. California should consider amending the language in CVC § 15210(p)(7) to track the language used in 49 CFR § 383.5. *(Per Legal Review)*
- CA/PI-11 **Item 98 – 49 CFR § 384.206 – Provide Requesting States With Complete Driving Records For At Least Prior 10 Years Within 30 Days Of Receiving Request**
The CDL Indicator states that California furnishes to requesting states complete driving records for at least the prior 10 years within 30 days of receiving the request but provides no reference. No statute or regulation could be located that expressly authorizes the Department to provide any, much less, complete driver records to other states, that the records be for at least the preceding 10 years, or that the records be furnished within 30 days of the date of request. Because state agencies are creatures of statute and have only those powers either specifically granted to them or necessarily associated with those powers that are specifically granted to them, California should consider enacting these specific requirements to avoid overlooking them in any redesign of their records system and to forestall any complaints by drivers transferring to another state that California lacked the authority to forward the complete record. *(Per Legal Review)*
- CA/PI-12 **Items 240, 241, 242 – 49 CFR § 384.207– Notify CDLIS Of CDL Issuance, Implement CSOR Within 10 Days, Notify CDLIS Of Change Of Driver ID Information Within 10 Days**
The CDL Indicator states that California (240) notifies the operator of the CDLIS within 10 days of the issuance of a CDL, (241) implements a CSOR within 10 days of the issuance of a CDL, and (242) notifies the operator of the CDLIS within 10 days of a change to driver identification information but provides no reference for these Items. No statute or regulation imposing these requirements could be located. California should consider expressly enacting these requirements in order to provide a sufficient legal basis for taking this action and to help preclude this requirement from being overlooked whenever the California system is updated or replaced. *(Per Legal Review)*

- CA/PI-13 **Item 247 – 49 CFR § 384.204 – Display Correct Information On CDL Document** California places the issuance date on the driver's license, but it is not clearly identified as the issuance date, and it therefore might be overlooked or not understood by out-of-state law enforcement and DMVs. *(Per Legal Review)*
- CA/PI-14 **Items 249 and 252 – 49 CFR § 384.204 – Display Endorsements And On Front Or Back, Explanation Of All Other Endorsements** The CDL Indicator states that California (249) displays endorsements on the CDL and (252) an explanation on the front or back of the document explaining all endorsements except those applicable only to CDL and refers to CVC §§ 12811(a) (1) (B), 15275, and 15278 as its authority to do so. CVC § 12811(a) (1) (B) requires that each license "contain a space for the endorsement of a record of each suspension or revocation thereof." There is no mention of regular driving endorsements. CVC §§ 15275 and 15278 impose requirements to have endorsements in order to operate certain types of vehicles or carry certain types of cargo or passengers, but do not specify that the endorsements must be displayed on the driver license document. No express authority could be found to require California to display this information on its CDL documents. California should consider enacting this requirement in order to provide a sufficient legal basis for taking this action and to help preclude this requirement from being overlooked whenever the California system is updated or replaced. *(Per Legal Review)*
- CA/PI-15 **Item 264 – Record All Convictions From Other States – 49 CFR § 384.225** The CDL Indicator states that California records all convictions of its drivers arising in other states and refers to CVC § 1808. CVC § 1808 establishes which records are open to the public, including convictions, but does not address the recording of convictions received from other states. CVC § 1806 requires the Department to record abstracts of convictions "received under this code." It does not address convictions arising in other jurisdictions. California should consider amending CVC § 1806 to expressly require the Department to record and use out-of-state convictions in order to provide a sufficient legal basis for taking this action. *(Per Legal Review)*
- CA/PI-16 **Item 265 – 49 CFR § 384.225 – Record All Convictions Within 10 Days** The CDL Indicator refers to CVC § 1808 as California's requirement to record all convictions within 10 days. CVC § 1808 establishes which records are open to the public, including convictions, but does not address the timeliness of recording convictions reported to the Department. CVC § 1806 requires the Department to record abstracts of convictions "received under this code." It does not address the timeliness of recording the convictions. California should consider amending CVC § 1806 to expressly require the Department to record all convictions within 10 days of receipt in order to provide a sufficient legal basis for taking this action and to help preclude this requirement from being overlooked whenever the California system is updated or replaced. *(Per Legal Review)*

CA/PI-17 **Item 266 – 49 CFR § 384.225 – Make Driver History Available To Requesting States Within 10 Days** The CDL Indicator refers to CVC § 1808 as California's authority to furnish driver records to requesting states within 10 days. CVC § 1808 establishes which records are open to the public, including convictions, but does not impose any time limits on providing records to users authorized by 49 CFR 384.225, including other states. California should consider amending CVC § 1808 to require that these records be furnished within 10 days of the request. *(Per Legal Review)*

CA/PI-18 California treats the following convictions received via CDLIS as disqualifying offenses. **Added 2-7-06: Because the listed ACD codes below are not defined as FMCSR-disqualifying offense ACD codes, other states receiving convictions with these ACD codes would not consider them for disqualification.**

California can be more stringent than the FMCSR requirements. However, California needs to review its tables to confirm whether it wishes to impose disqualifications for these ACD codes that FMCSA does not recognize as disqualifying offenses. **Added 2-7-06: These ACD codes would be uniquely disqualifying offenses for California only and not for any other state:** *(Per Onsite Report)*

- A. A24 (O/S 38),
- B. A25 (O/S 58),
- C. B13 (O/S AC),
- D. B51 (CVC 12500, 12500A, 12500C, 12500D, 15250, O/S 24),
- E. B72 (CVC 12951, 12951A, 12951B, 15250A, 15275),
- F. B91 (CVC 15275A),
- G. D29 (CVC 14603, OS 21),
- H. F34 (CVC 22526(c)
- I. M01 (CVC 2800(b), 22451),
- J. M05 (CVC 21659),
- K. M08 (OS 30),
- L. M09 (CVC 22451A, 22452, 22452A, 22452B, O/S BA),
- M. M16 (CVC 21462),
- N. M40 (O/S 07),
- O. M61 (CVC 21658, 21658(a), and
- P. U01 (CVC 2800.1, 2800.2, 2800.3).

NOTEWORTHY PRACTICES OF THE STATE OF CALIFORNIA

California would like to thank the auditors for their high praise of some of our practices.

CA/NP-1 California has the following noteworthy practices in the issuance process:

- A. California queries the US Customs and Immigration Service (USCIS) Alien Status Verification Index (ASVI). DMV has online real-time access to ASVI, and includes a secondary verification process when the ASVI connection is interrupted.
- B. California captures the applicant's photo, thumbprint, and signature, and issues the applicant a photo receipt during the testing phase to ensure that the applicant testing is the true applicant for licensing purposes.
- C. California has automated procedures in place to prevent the issuance of a hazardous materials endorsement without the appropriate background checks required by FMCSA and TSA.
- D. The California CDL instruction permit has a disclaimer generated on the document indicating that the permit does not authorize the transportation of hazardous materials.
- E. For a duplicate CDL license, California requires the driver to present the required birth date/legal presence documentation or a document with the applicant's name and California address (utility bill, rent/mortgage receipt, personal check). The technician also verifies the photo in the California driver database.
- F. California requires the customer's photograph before the collection of fees and the taking of tests and retains the photograph for up to 12 months in the electronic driver record even if the customer fails to obtain a license document.

CA/NP-2 California has the following noteworthy practice in the area of conviction and withdrawal processing:

- A. The DMV Justice and Government Liaison Branch receive a monthly report ("On-Line Access California Courts Driver Record Updates") of total conviction errors by court location and track the report for any anomalies that occur over time. Reports also show the number of commercial vehicle and hazmat indicators reported by the court, allowing staff to determine if courts are entering the hazmat and CMV indicators and to track any significant changes in reporting.

CA/NP-3 California has noteworthy practices in the internal audit and management oversight of the CDL program, including:

- A. California has extensive background and management reporting mechanisms to identify potential for fraud and abuse.
- B. California's DMV Investigations has over 200 sworn officers as employee investigators for identity theft, employee fraud/corruption, and licensing fraud.
- C. California's DMV Investigations Unit has available to it a data warehouse with 13 months of transaction-related data that can be customized for use in employee fraud investigations. California's time-stamping transactions throughout the issuance process are used to identify excessive amounts of time spent by individual technicians and examiners with customers relative to expected transaction times.
- D. Field offices have trained employees with specific responsibility for approving identity documents. The employees have undergone the AAMVA fraud training through California's participation in the AAMVA train-the-trainer program.
- E. Technicians receive fraud training on an as-needed basis as part of the Wednesday training schedule set aside before office opening.
- F. Extensive reminders and examples of possible fraudulent activity are interspersed throughout the DMV Driver License Manual reference document. Field office staff is trained to report suspicious applications and other documents for further investigation, place the application in pending status for review, and notify the customer to visit a local investigator.

ACRONYMS/GLOSSARY

AAMVA	The American Association of Motor Vehicle Administrators is a tax-exempt, nonprofit organization striving to develop model programs in motor vehicle administration, police traffic services and highway safety. AAMVA serves as an information clearinghouse for these same disciplines, and acts as the international spokesman for these interests.
ACD	States use the AAMVA Code Dictionary of representational codes to exchange conviction and withdrawal information with other states.
BAC	Blood Alcohol Content
BCIS	Bureau of Customs and Immigration Services, formerly Immigration and Naturalization Service
CDL	Commercial Driver License
CDLIS	Mandated by the Commercial Motor Vehicle Safety Act of 1986, the Commercial Driver License Information System supports the issuance of commercial driver licenses (CDLs) by the jurisdictions, and assists jurisdictions in meeting the goals of the basic tenet "that each driver, nationwide, have only one driver license and one record" through the cooperative exchange of commercial driver information between jurisdictions.
CMV	Commercial Motor Vehicle
CSOR	States use the CDLIS change-state-of-record transaction to take ownership of an existing CDL pointer on CDLIS for CDL holders transferring from another state
DL	Driver License
DOB	Date of Birth
FMCSA	Federal Motor Carrier Safety Administration is an agency of the Department of Transportation responsible for regulating motor carriers, drivers, and vehicles
FMCSR	Federal Motor Carrier Safety Regulation
FTA/FTP	Failure-to-Appear/Failure-to-Pay
GVWR	Gross Vehicle Weigh Rating
Hazmat (HM)	Hazardous Materials

MCSAP	Motor Carrier Safety Assistance Program is the inspection program conducted by officers reviewing operability of the CMV or conduct of driver
MCSIA	Motor Carrier Safety Improvement Act of 1999, legislation that adds additional disqualifying offenses to the list of disqualifying offenses against drivers
MPH	Miles per hour
MPR	Master Pointer Record on CDLIS central site managed by AAMVA
NDR	National Driver Register
NRVC	The Non-Resident Violators Compact is a voluntary agreement among 45 states for the treatment of drivers who fail to appear to answer a summons. The purpose of the NRVC is to standardize methods utilized by the various jurisdictions to process non-resident violators receiving citations, and their failure to appear or otherwise failure to comply with outstanding moving traffic summons
OOSC	States use the CDLIS out-of-state-conviction transaction to transmit conviction data to the licensing state of the CDL holder or non-CDL holder convicted of an FMCSR disqualifying offense while operating a CMV
PDPS	The Problem Driver Pointer System acts as a "pointer" for the National Driver Register (NDR). Based on information received as a result of an NDR search, PDPS will "point" the State of Inquiry to the State of Record, where driver history information is found
SSA	Social Security Administration
SSN	Social Security Number
SSOLV	Social Security Online Verification is an AAMVA application that assists jurisdictions in implementing SSA's online verification of an individual's SSN during the driver's license issuance or renewal process with SSA.
STA	Security Threat Assessment (the requirement to obtain clearance from security agencies prior to creating a hazardous materials endorsement on a CDL license document), or Transportation Security Administration , depending on the context of the statement
TSA/DHS	Transportation Security Administration, an agency of the Department of Homeland Security
UNI	Universal Network Interface is an AAMVA product that resides on a state site's host and fills an "interface" role between a site's application system and the telecomm